

EXHIBIT 8

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
CHICKEN SOUP FOR THE SOUL . Case No. 24-11442 (TMH)
ENTERTAINMENT INC., et al., . Joint Administration Requested
. .
. . Courtroom No. 3
. . 824 North Market Street
. . Wilmington, Delaware 19801
. .
. . Tuesday, July 2, 2024
. . 9:00 a.m.

TRANSCRIPT OF FIRST DAY HEARING
BEFORE THE HONORABLE THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

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1 || (Proceedings commenced at 9:00 a.m.)

2 THE COURT: Good morning, counsel. This is Judge
3 Horan on the record in Chicken Soup for the Soul
4 Entertainment, case number 24-11442.

5 Mr. Palacio, good morning. How are you?

6 MR. PALACIO: I'm doing well, Your Honor, good
7 morning. For the record, Ricardo Palacio of Ashby & Geddes,
8 here on behalf of Chicken Soup for the Soul Entertainment,
9 Inc., and its affiliated debtors.

10 At the outset, as we did yesterday, Your Honor, I
11 want to thank you for accommodating us and having this
12 hearing this morning. Your Honor, I'd like to cede the
13 podium as we did yesterday, to Mr. Cooley from Reed Smith.
14 Thank you.

15 THE COURT: Certainly. Good morning, Mr. Cooley.
16 It's good to see you again. How did you make out over the
17 past day?

18 MR. COOLEY: Good morning, Your Honor. It's good
19 to see you again as well. And again, thank you for seeing us
20 on both on such short notice and so early in what I know is a
21 busy day for you.

22 As promised, Your Honor, HPS and the company
23 engaged yesterday on some of the key issues raised in the
24 various documents, obviously primarily centered on the DIP
25 motion and the motion to -- what I'll call the motion to

1 reconstitute.

2 Although I was unsuccessful in getting a meeting
3 between the principals yesterday, which I had hoped to
4 achieve, Mr. Pisa (phonetic) and I, nevertheless, had several
5 conversations through the day and into the evening.

6 Among the other fundamental issues, one of the
7 ones that I understand HPS remains really adamantly opposed
8 to or adamant in their position on is not just that they are
9 opposed to Mr. Rouhana's control of the company, which is
10 obviously something that we dealt with, company dealt with
11 prior to the bankruptcy, with his resignation and replacement
12 as CEO, but also their opposition to the presence and
13 existence of the new board, which the company contends
14 comprises independent board members. But HPS obviously
15 disagrees. They want their former directors back. And I
16 gather that is -- that is sort of where we are.

17 THE COURT: Hey, Mr. Cooley. I can't tell if you
18 are frozen or if you have stopped speaking. Okay. I think
19 Mr. Cooley's frozen. Mr. Palacio?

20 MR. PALACIO: Your Honor, again, for the record,
21 Ricardo Palacio of Ashby & Geddes on behalf of the debtors.

22 Your Honor, I wish I could give you more
23 information in terms of those discussions between HPS and the
24 debtors. I just was not privy to them. So I can't sit here
25 and characterize what did or did not happen and what the

1 current state of play is.

2 I reached out to Mr. Cooley to try to get him back
3 online. If Your Honor may indulge us to try to get him.

4 THE COURT: Absolutely. It looks like he's just
5 dropped off and Zoomed to come back in.

6 MR. PALACIO: Your Honor, one suggestion while we
7 try to get him, and I did speak to Mr. Cooley prior to the
8 hearing, is to allow the other parties to be heard, including
9 HPS as well as Owlpoint, just to keep the hearing going and
10 not to simply delay things. So that would be my suggestion,
11 Your Honor, but, of course, however you would like to
12 proceed.

13 THE COURT: All right.

14 MR. COOLEY: Your Honor, I'm so very sorry. I'm
15 not sure what happened, but my internet just blinked out on
16 me. I'm gratified that it came back. That was a little
17 heart stopping.

18 I think where I was was to say we filed a short
19 while ago a motion or an objection to the motion to shorten
20 notice on the motion to reconstitute. We obviously have real
21 concerns about the very final, very significant effect of the
22 relief sought by them, including, frankly, not just the
23 implications for the company, but also for potential
24 individuals who I would assume would be called as witnesses
25 in connection with that, including Mr. Rouhana.

1 There are serious allegations, and there were
2 serious personal implications, and the idea of going forward
3 without a chance for people to properly prepare and respond,
4 I think, would be highly prejudicial. I can come to that at
5 the appropriate time.

6 Otherwise, I think the Court has asked me for an
7 update, and I've provided it. Perhaps the best thing for me
8 to do is yield to Mr. Dunne and possibly also the counsel for
9 Owlpoint, if the Court wishes to hear from them, or whomever
10 the Court wishes to hear from. Thank you.

11 THE COURT: You're welcome. Sure, I'm happy to
12 hear from anybody who'd like to be heard. Why don't we start
13 with Mr. Dunne, please? Good morning, Mr. Dunne.

14 MR. DUNNE: Good morning, Your Honor. And again,
15 I echo the comments from debtor's counsel. We appreciate you
16 accommodating us on such short notice.

17 With the Court's indulgence, I'd like to give a
18 quick overview of the last 24 hours, how I think today could
19 play out for the matters that Your Honor is being asked to
20 adjudicate. But most importantly, I'd like to just give a
21 little history of the case. Because while what happened pre-
22 petition didn't happen on your watch, a number of those are
23 going to animate decisions that Your Honor is going to have
24 to decide over the next ensuing weeks.

25 And I'm not going to get into the motion

1 specifically. It's really just to give the perspective of
2 HPS, who has had, I think, the most interactions with the
3 company and Mr. Rouhana of any of the creditors, though I
4 know that a number of the other creditors have had similar
5 reactions.

6 So with the Court's permission, I just want to
7 cover those three topics.

8 THE COURT: Yes, sure.

9 MR. DUNNE: So with respect to the last 24 hours,
10 we were very focused, as I think the court was, on figuring
11 out a way to fund the payroll for the employees and the
12 health insurance for the employees. And we told the company
13 that we were willing to provide those sums to a DIP. And
14 with respect to other amounts -- this finally was a surprise
15 to us. We didn't know when it was going to happen. There
16 was no pre-petition conversations that you would typically
17 see with your incumbent, large, first lien lender about use
18 of cash collateral, a DIP, and more importantly, what was the
19 financial condition (inaudible) condition and cash flow needs
20 of the company going forward.

21 So for that half of the DIP request, we said we
22 needed that information. We'd analyze it quickly. But what
23 we could give them now is enough to kind of clean up the
24 payroll for the employees and the insurance.

25 And we also required, and I'll get into this in

1 detail because it's important -- the SRC that was in place,
2 the director that was in place a few weeks ago to be
3 reactivated because we think they were (inaudible), and
4 I'll come back to the reasons for that in a second.

5 Debtor's counsel also made much about a
6 conversation among principals. My understanding is that
7 conversation has occurred before the hearing. And we always
8 intended to have the principals try to get it across the
9 finish line once we got a response from the company on our
10 proposal.

11 That response didn't come in yesterday. It came
12 in at 6:00 a.m. today. And it showed that we were nowhere
13 close, which is why we're in front of Your Honor. And then
14 we set up the conversation among principals, which occurred,
15 I think, shortly before this hearing.

16 Before I get into the history, which I think is
17 the main point of my comments, I want to just make one
18 observation about the filing that the debtors made a few
19 minutes ago. It's something that I haven't seen at all,
20 which is they're basically saying, Your Honor, let's not
21 compel Mr. Rouhana to testify today because it could be,
22 "grossly unfair" and prejudicial to him to do that.

23 Two points, Your Honor. He's the debtor's chosen
24 first day declarant. I don't know how we go forward on the
25 relief requested if he does not testify. They chose him. He

1 should be made available. And if not, they're not going to
2 meet their burden on the DIP (inaudible). But also
3 importantly, you see, Your Honor, why we're concerned that
4 Mr. Rouhana is still in control of the company. He got the
5 company to do his bidding and to try to avoid testifying
6 personally because it may have collateral consequences for
7 him in other civil or otherwise contexts.

8 And so that is why we have been focused on
9 governance, even though Mr. Rouhana has handpicked the new
10 board members that replaced the SRC.

11 So Your Honor, just a little history, and I only
12 need a couple of minutes here, and I'm not going to describe
13 all of it. This is not a full recitation. That's all for
14 another day. Just some history that's relevant to questions
15 the Court will face today.

16 One thread is the outpoint and similar financings.
17 In November of last year, 2023, the company reached out to
18 HPS to advise us that a bankruptcy filing is imminent unless
19 we agreed to (inaudible) our debt for a stake in the company.
20 Their accountants were saying they may get a qualified going
21 concern opinion from their auditors.

22 All of these are your traditional bellwethers of
23 the need for a restructuring and a permanent fix to the
24 balance sheet. We told them that we would discuss the terms
25 of a potential DIP and an orderly Chapter 11 filing. They

1 went a different path, which I'll describe in a second. We
2 think the company should have filed then, but they chased
3 some outward financing.

4 What we didn't know then but what we know now,
5 Your Honor, is that the company started right around that
6 time to wrongfully redirect and convert employee payroll
7 taxes to other uses. The company spent what should have been
8 remitted to various governmental agencies on behalf of their
9 employees, and I haven't seen that level of convergence for
10 that long outside some of the most notorious cases over the
11 past few decades.

12 And instead they wasted the first six months.
13 They chased the GRA financing of Redbox. We were told
14 repeatedly, 30, 45 days from closing. Then there was GRA and
15 Owlpoint working together financing that was going to close
16 in early May. That didn't happen either. We kept
17 accommodating.

18 There was additional requests and time to try to
19 do something out of court. But there was a pattern of
20 promises that were broken, sometimes gravely so. And it's a
21 pattern that we're still seeing that they're not getting on
22 with the kind of traditional paths for companies in this
23 situation in terms of engaging with the 1L's trying to get a
24 use of cash collection or a DIP from your incumbent lenders.
25 And all the while, value deteriorated or was diverted away.

1 And we are seeing that pattern play out now.

2 So my last point, Your Honor, is the most
3 important one. It's the recent forbearance agreements. It
4 raises the corporate authority issues and is also relevant to
5 the DIP motion.

6 The HPS loan came in as principal amount of more
7 than 500 million in August of '22. It provided for PIK
8 interest initially, so the company had no cash interest
9 obligations until this year.

10 In February of this year, the interest obligations
11 switched from PIK to cash pay. The company couldn't make the
12 payment, which led to a default, and the forbearance
13 (inaudible) come about discussed, and ultimately the pre-
14 petition acceleration of our debt.

15 After the company missed its interest payment, the
16 debtors asked us to forbear from exercising revenues. We did
17 so. There were also some various amendments to the credit
18 agreement at that time. Mr. Rouhana, who's the majority
19 stockholder, also executed an irrevocable proxy which granted
20 the HPS the right to vote his shares in connection with any
21 corporate action.

22 The credit agreement and (inaudible) were also
23 amended. The debtors of each of its subsidiaries were
24 required to maintain two independent directors on their
25 boards. Each board must establish and maintain an

1 independent subcommittee, which is what we have referred to
2 as the SRC, the strategic review committee, which must
3 include those two independent directors, John Young
4 (phonetic) and Rob Rorshower (phonetic). They were
5 appointed, they were serving, they had counsel, Rich
6 Pachulski of the Pachulski firm.

7 In addition, none of the debtors could file for
8 Chapter 11 without the affirmative resolution of the majority
9 of each of these SRC. The corporate governing documents of
10 the subsidiary were amended to effectuate these requirements.
11 So the operative internal documents had these requirements in
12 there.

13 And further, the entities agreed to vote in favor
14 of restructuring transactions approved by the SRC and against
15 actions that are inconsistent with the forbearance agreement
16 or the credit agreement. As I'll describe is Mr. Rouhana
17 willfully and brazenly breached those provisions by
18 terminating all those directors. But before I get to that
19 point, there's another relevant aspect.

20 HPS agreed as part of that forbearance to accept
21 40 cents on the dollar in satisfaction of its debt, provided
22 they received funding on that by June 6th. So for a \$500
23 million obligation could be retired and satisfied
24 (inaudible). The debtors couldn't raise the funds by June
25 6th, and they asked HPS to extend the date to (inaudible) to

1 June 11. We read yet again the debtors couldn't meet that
2 deadline either.

3 That prompted another act of bad things where Mr.
4 Rouhana then reported to terminate all of the directors on
5 the various boards, save himself, on the eve of the
6 expiration of the forbearance agreement in violation of the
7 proxy and the constituent operative documents at the
8 subsidiaries. He then replaced them with his handpicked
9 directors who are still serving.

10 There's a couple of takeaways here, Your Honor,
11 and then I'll yield the podium. We had heard at that time,
12 as did Richard Pachulski who was in -- I think he's on the
13 Zoom now and represents the SRC -- that the company and Mr.
14 Rouhana were concerned that the SRC was imminently going to
15 file the company for Chapter 11. And they didn't want that
16 to happen.

17 Here we are two weeks later, roughly, and we are
18 in Chapter 11. And what happened in that timeframe is the
19 company missed its payroll and fails to fund health insurance
20 for its employees. But the real reason he terminated the
21 forbearance agreement and the directors were removed
22 (inaudible) and to not avoid Chapter 11 at all but to place
23 his handpicked directors in the seats for the Chapter 11 to
24 assert more control.

25 The lack of corporate authority, Your Honor, is

1 troubling. It points to some ultra vires acts as well. Mr.
2 Rouhana believes that the irrevocable proxy didn't strip him
3 of his ability to vote his shares to move directors because
4 the operative docs at the public company were not changed and
5 prohibited.

6 We disagree and this is an issue for another day.
7 There's Delaware case law that's helpful on the scope of
8 proxies such as the one that Mr. Rouhana granted. But we can
9 debate that in the future.

10 What I want to just underscore here is that that
11 argument, the only one they have, only exists for the parent.
12 The SRC was also appointed and served at each of the
13 subsidiaries. Those subsidiaries were LLCs and the operative
14 documents of each of them were amended to include the
15 required provisions and restrict removal of the directors.
16 That was just blatantly ignored, and as a result, had no --
17 didn't have the proper effect to swap out those directors.

18 Two points, Your Honor. On the willingness of HPS
19 to take a substantial discount, the forbearance and related
20 documents provided the debtors with a unique opportunity, one
21 I rarely see, namely, to retire to a person in debt within a
22 time frame for a substantial discount, in this case for a 60
23 percent discount.

24 Obviously, the debtors and Mr. Rouhana would be
25 extremely motivated to do so. For payments of roughly 200

1 million, they could have removed over \$500 million of
2 liabilities in the balance sheet, but they could not raise
3 the money. No one was willing to fund that amount. It is
4 probative of one of the key issues that are contesting DIP
5 financing today.

6 The debtors are alleging that it is so clearly the
7 case that we are over-collateralized and over-secured that
8 they can use the equity (inaudible) and the collateral as
9 addictive protection. But they couldn't find a way out just
10 weeks ago to take HPS out at 40 cents on the dollar, and they
11 couldn't find a market participant, a third party willing to
12 fund on the (inaudible) package 40 cents.

13 Last point, Your Honor, you heard from the
14 debtor's counsel and their pleadings actions that HPS may
15 have taken or claimed they may have. We obviously disagree
16 that any claims ever existed and always viewed those
17 assertions as noise, nuisance. All the while the debtors,
18 you know, kept missing their projections and never actually
19 have a compliant KPL. But that's an irrelevant side show.

20 The one point I want to drive home to the Court
21 now and for everyone to understand at the outset of the cases
22 is that the debtors and Mr. Rouhana contractually released
23 any claims against HPS as part of the forbearance agreement
24 that was executed a few weeks ago.

25 That ends it, and we shouldn't waste any more

1 court time on that fatuous topic. It also speaks volumes as
2 to what they really think about those claims. They were, as
3 is often the case, released in those -- in those forbearance
4 agreements.

5 Your Honor, there's also -- this is going to come
6 up in a bunch of the first day motions with my partner, and
7 (inaudible) will handle. Mr. Rouhana owns several companies
8 that track and interact with the debtors, and they provide
9 managerial and back-office services.

10 We suspect that significant value leaked to those
11 entities over the past several quarters while other parties
12 were harmed by the continued degradation in operational
13 performance and overall value. And that will all be the
14 subject of investigation and, no doubt, further litigation.

15 But for today's will be -- we need to ensure
16 against any further leakage or value or erosion to those
17 affiliated parties controlled by Mr. Rouhana. Your Honor,
18 you'll hear from Mr. LeBlanc later with respect to our DIP
19 objection. I want to be clear. We did not consent to the
20 DIP facility. We're willing to fund an alternative that will
21 pay the employees and then negotiate whatever is the
22 appropriate amount for the balance of the case after we have
23 conversations with respect to the contours of what the
24 Chapter 11 should look like.

25 They are proposing, Your Honor, Hail Mary DIP.

1 They're hoping Your Honor kind of doesn't open the panic
2 doors, precedent on adequate protection and what you need to
3 find in order to approve it. And they're also not making a
4 witness available, their witness, to testify.

5 And with that, Your Honor, we'll yield the podium
6 to others. We hope that we can fix the governance issues
7 soon. We think that that's a gaming item, and if we could
8 reactivate the SRC and its counsel, both who have impeccable
9 reputations, that would go a long way to restoring some
10 transparency and trust. Thank you, Your Honor.

11 THE COURT: Thank you for your comments, Mr.
12 Dunne. I see a few people on screen. Let me start with Mr.
13 Pachulski.

14 MR. PACHULSKI: Thank you, Your Honor. As always,
15 I appreciate Your Honor giving us the opportunity. Your
16 Honor. Richard Pachulski, Pachulski, Stang, Ziehl & Jones on
17 behalf of the strategic review committee, which if okay, I'm
18 going to refer to it as the SRC.

19 THE COURT: Of course.

20 MR. PACHULSKI: Thank you, Your Honor. As Mr.
21 Dunne stated, there was a belief that there would be a
22 default under the April 29th forbearance agreement as of June
23 6th. There was a hope that wouldn't happen. But in light of
24 that possibility, the SRC retained our firm to assist in the
25 event that that default took place.

1 What I want to do is deal with what I refer to as
2 significant disclosure problems. And what I've learned in my
3 career is probably the first rule of restructuring is
4 disclosure. We've seen what happens when you don't disclose
5 and the effects are, to say the least, really bad.

6 So I want to go through some of the lack of
7 disclosure in this case, but I do want to comment something
8 Mr. Cooley said, which is we have independent directors, and
9 we put them in. Mr. Rouhana, who apparently is concerned
10 about criminal actions, potentially, is the one who put them
11 in. But I'm not going to even argue that, because I've seen
12 that, and I've made this argument before, many times. Mr.
13 Cooley has a value, cleaned it all up.

14 In none of those cases was there independent --
15 were there independent directors that were wrongly terminated
16 as part of a forbearance agreement. So while an interesting
17 argument, and one that lots of debtors' professionals like
18 myself make, it is completely inapplicable in this case.

19 So let's go through some of the lack of
20 disclosure, including in the filing of the papers, which
21 frankly, Your Honor, is one reason I think Your Honor set the
22 hearing for Monday. Your Honor read the papers. They were
23 pretty plain vanilla in many respects. There was no
24 reference at all to some of the things that HPS had been
25 objecting to.

1 And so Your Honor set the hearing, and I think,
2 frankly, was probably pretty surprised when HPS, within 48
3 hours, who had not complained, as far as I know, had to file
4 an objection to a priming (inaudible), which I'll deal with
5 in a moment, and had -- and filed a motion. And I think this
6 is important -- to not just reconstitute the board, but in
7 the alternative for a Chapter 11 trustee or a Chapter 7.

8 It was so egregious that HPS made the
9 determination that there should be a Chapter 7 trustee
10 potentially. Now, I've had two of my colleagues call me, one
11 who had nothing to do with his case, and said, is HPS
12 kidding. My response was no. They are so disturbed by
13 what's happening here that their only alternative, a horrible
14 alternative for Chapter 7, they will accept it,
15 notwithstanding a \$500 million (inaudible).

16 Now, why is that? Your Honor, if you read the
17 pleadings carefully, which I know Your Honor did, you would
18 have no idea that there was a (inaudible) forbearance. None.
19 You'd have no idea that that exists. What Your Honor also
20 wouldn't know because this wasn't disclosed is that there was
21 8K filed with that forbearance agreement that required
22 because it was a public company that provided that a Chapter
23 11 could not be filed unless the two directors, Mr. Rorshower
24 and Mr. Young, approved of that filing.

25 I would suspect Your Honor missed that in the

1 pleadings because it doesn't exist. It would have been nice
2 if they had stated, even if, just like counsel said, we have
3 independent directors, we have an alternative, they said,
4 yes, this was the case, but we have the argument, which they
5 don't. But it was clear those two directors had to approve
6 it. Not disclosed.

7 Here's what else isn't disclosed, Your Honor, for
8 a public company and the 8K requirement. After the change of
9 the board, wrongly, on June 11th, on June 12th, HPS sent a
10 letter saying that the change was wrong. That is not
11 disclosed in the 8K. But if that's not enough, Your Honor,
12 the day after that, on June 13th, HPS sent an acceleration
13 notice. Amazingly, that's not included in the 8K. In an 8K.

14 But if we're not done yet, on June 14th, after the
15 first letter on the 12th and the acceleration letter on the
16 13th, on June 14th, they said that they are going to
17 immediately exercise their revenues in a letter. That, too,
18 is not included in the 8K.

19 Now, interestingly enough, they know how to file
20 8Ks because they filed one on June 17th, not disclosing any
21 of what I just described from the 12th, 13th, and 14th, but
22 describing that the board had been reconstituted.

23 Now, that all should have been disclosed, but what
24 else wasn't disclosed, Your Honor, we show up at a hearing
25 yesterday, and HPS -- they didn't disclose that they really

1 hadn't spoken to HPS, which is a first in my career, and I
2 think I do as much better work as any, that they had no
3 agreement or disagreement. It was just kind of alluded to in
4 some respects. But what they clearly didn't disclose is they
5 had not spoken to any of their secured creditors, four of
6 which were on the call yesterday, all of which were being
7 primed. No disclosure of any of that, Your Honor. Almost
8 unheard of.

9 So what does the SRC believe? The SRC believes
10 that Your Honor must hear the motions reconstituted before
11 you can really hear anything else because there is no
12 corporate authority. And the SRC believes, notwithstanding
13 that it may mean that it will not be reconstituted, but there
14 will be a Chapter 11 trustee or a Chapter 7 trustee, that
15 those are better alternatives than having what this company
16 has.

17 Now why is that, Your Honor? Here's why. We have
18 a public company which never stopped Mr. Rouhana from doing
19 dividends or self-serving (inaudible) agreement to pay
20 himself. Why else? Because payroll wasn't paid. No attempt
21 to work through that issue. Why else? Because medical
22 benefits where people are basically told, see if you can
23 avoid elective surgery, stopped on May 14th.

24 But the most -- but the interesting thing is they
25 did disclose the \$15 million monthly payroll taxes. But

1 here's what they didn't disclose, Your Honor. Mr. Rorshower,
2 Mr. Cohen was an independent director on the board, and Mr.
3 Young, were not told about the unpaid payroll taxes. What
4 originally was -- they were told was 10 million and then 15
5 million sometime, I believe, in early June. They had never
6 heard about the unpaid payroll taxes which had been going on
7 for months. For months. Because this board was never told
8 anything that Mr. Rouhana didn't believe was in his interest.

9 So where does that leave us? The SRC and I have
10 taken a very hard look at the (inaudible), and maybe in some
11 cases we would have said let's figure out a way to get the
12 money. But there are two key points, one point that Mr.
13 Dunne has alluded to and another that is in their pleadings,
14 but has not been specifically alluded to in this.

15 The first he alluded to is they are seeking to
16 find a security creditor, a very well-known prime, who looks
17 for yield, who was willing to pay \$200 million of an excess
18 of a \$500 million obligation.

19 Now, Your Honor, I have done a number of primes
20 with my career, but that's because it's a long career, and I
21 could probably count them on less than two hands at
22 (inaudible). And when we have, we have had detailed
23 valuations, we've had detailed budgeting to see how it's
24 going to go forward.

25 What do you have, aside from some general

1 characterization by Mr. Rouhana, you have a pleading that
2 says there was a report due in 2023 that is not attached to
3 anything, that is not authenticated in any way, that was done
4 as some kind of pro forma valuation on an assumption that the
5 losses would be in the neighborhood of 70 million when the
6 losses, again not disclosed, were 700 million, 10 times. I
7 don't see how Your Honor can approve the DIP with the factual
8 basis, aside from the fact Your Honor doesn't even know who
9 the secured creditors are, your priming, because the debtors
10 didn't see fit to put it in a pleading.

11 So Your Honor, I don't like what's happening to
12 1100 employees or the number I believe it is. It's really
13 unfair. But what's unfair is that Mr. Rouhana egregiously
14 changed the board and had never had a discussion about filing
15 the Chapter 11. There's no letter, there's no discussion.
16 It was an excuse, I guess, that Mr. Rouhana made for doing
17 it. There was no basis for it. There was no agreement with
18 the lenders to fund a DIP.

19 So I am not in the business of assisting boards in
20 filing Class Chapter 11s. So this was all just something
21 that was made up. But I wanted to state the last point,
22 which I found actually in some respects the most surprising
23 which Mr. Dunne referred to.

24 So this morning we did see the pleading that oh,
25 we should delay this hearing. We should delay, I'm sorry,

1 the board reconstitution motion because there may be criminal
2 issues. Well, Your Honor, most of the time that there are
3 motions for appointment of trustee, there are criminal
4 issues. And Mr. Rouhana is going to have to deal with
5 (inaudible) because not filing 8Ks when people are trading on
6 the stock is completely inappropriate.

7 But that is not an excuse to either file a
8 declaration and then say, oh my God, I may have criminal
9 liability down the road because he may have waived. I'm not
10 a criminal lawyer, but I don't know what his issues are. But
11 this should happen now. This should happen.

12 And I understand it's not going to happen this
13 week, but there should be a hearing on reconstituting the
14 board or, alternatively, to appoint a trustee or convert this
15 case. Because to allow Mr. Rouhana to be the puppeteer here,
16 which is only doing dramatic damage to all the constituents,
17 not just HPS and not just the employees, but all the
18 creditors who are literally owed hundreds of millions of
19 dollars because of how this company was ran, is fundamentally
20 unfair.

21 And with that, Your Honor, I ask that you simply
22 suspend the hearing on the motion -- that is what the SRC is
23 asking for -- and that you immediately set the motion that
24 counsel would like to have delayed because people have to
25 speak to their criminal counsel, which frankly they could do

1 today. It's not that complicated. They will either testify
2 or they won't.

3 And with that, Your Honor, I will cede the podium.
4 But I certainly believe that going forward with a losing DIP
5 is really not in anyone's interest at this point. Thank you
6 again, Your Honor. And I'll be happy to answer any questions
7 Your Honor has.

8 THE COURT: Thank you, Mr. Pachulski. I'm going
9 to continue to hear from others, but I want to offer this
10 initial observation. I can't imagine what the path is to
11 approval of the proposed DIP today. I just can't see it.

12 And really my primary concern right now is the
13 employees. And what I hope could happen, and I know that
14 there were talks over the last 24 hours, but if something
15 could be agreed today so that we can pay those people and
16 restore their health benefits.

17 It's just kind of staggering to me that that's
18 where this company is. And Mr. Pachulski referred to what I
19 didn't see in the papers, and he's absolutely right, of
20 course, because they weren't there. And I was pretty shocked
21 yesterday morning when I started reading the filings that
22 were coming in and learning all the things that were omitted.
23 What frankly looked to me over the weekend like a fairly
24 routine first day hearing was going to turn out to be
25 anything but.

1 Look, I'm going to go on and continue to hear from
2 the others who'd like to be heard, but I just can't imagine
3 what the path is today. And particularly if Mr. Rouhana
4 doesn't want to testify, if the debtors don't want to
5 testify, what evidence will you be able to give? You're
6 dependent on him.

7 MR. COOLEY: Your Honor, if I can speak to just
8 that one point.

9 THE COURT: Yeah, please do, Mr. Cooley.

10 MR. COOLEY: Let me clarify at least one thing.
11 And I wanted to say also, I really sort of thought that we
12 were going around the room to sort of say our piece about the
13 current state of play and not make full opening statements.
14 I would note the debtor has not made one yet. That's
15 normally the debtor's prerogative to go first. And so I'm
16 going to find myself in the position of just responding to
17 everyone when they were done. And I'm happy to do that
18 because that's now what we're doing.

19 But let me just be very clear because I could see
20 Your Honor's expression, and perhaps you could see mine when
21 that came up. What we said in the papers, and I thought we
22 were clear about this, is that Mr. Rouhana, to the extent he
23 may have exposure, and that's true for anyone else, and I
24 don't know who has exposure, who has liability, but given the
25 nonpayment of payroll taxes, I can certainly imagine that

1 there are people who do, and that may include Mr. Rouhana.

2 Our point in the objection was that Mr. Rouhana
3 should not be compelled to testify on 24 or 48 hours' notice
4 regarding those matters, because those matters have
5 implications far beyond the case that could extend to him
6 personally, depending on what the evidence shows.

7 I don't think we ever said, and I want to be very
8 clear, we are absolutely prepared, if necessary, if we get
9 that far, to put Mr. Rouhana on the stand as our first day
10 declarant, as we intended from the start, to testify in
11 support of first day. That's a very important distinction.
12 And when I heard Mr. Pachulski say that, as I said, I could
13 see the Court's expression, and understandably so, given the
14 confusion.

15 But our first day declarant is absolutely here and
16 available to testify, again, if we get that far. Our concern
17 is that if we were to go into the motion to reconstitute
18 today, that that would be potentially prejudicial to him,
19 given the lack of opportunity to prepare for hearing on
20 proper notice, et cetera.

21 So I thank you for letting me make that one
22 clarification, Your Honor. I'm happy to let the Court -- if
23 the Court would like to continue letting people say their
24 piece, and I'll come back around and respond to some other
25 points at the end, I'm happy to do that as well. But I thank

1 you for letting me clean up, clear up at least that one bit
2 of confusion that clearly existed.

3 THE COURT: Yeah, I appreciate it, Mr. Cooley,
4 because I shared that misunderstanding of what the debtor's
5 position was. So I'm happy to hear that. Mr. Rouhana --

6 MR. COOLEY: This is what happens when we have to
7 draft things quickly, Your Honor.

8 THE COURT: I understand.

9 MR. COOLEY: We do the best we can.

10 THE COURT: Yeah.

11 MR. LEBLANC: Your Honor. Your Honor.

12 THE COURT: Who's speaking?

13 MR. LEBLANC: Your Honor, Andrew LeBlanc. I
14 apologize. If I could just respond to that point, Your
15 Honor, if possible.

16 THE COURT: Okay.

17 MR. LEBLANC: Your Honor, obviously, if Mr.
18 Rouhana were to testify today, we would expect to be able to
19 cross examine him as we would any -- I'm Mr. Dunne's
20 litigation partner, Your Honor. We'd expect to cross examine
21 him, including with respect to matters that either are in the
22 motion or should have been in the motion.

23 Frankly, the things that we would question him
24 about, many of them are included in their motions, including
25 the nonpayment of payroll taxes. That's included in the

1 wages motion, one of the motions that we objected to.

2 So I don't know the distinction that counsel is
3 trying to draw. If they're saying he's willing to put in his
4 declaration but not willing to be cross examined, we
5 obviously -- that's an unacceptable outcome for us. If he's
6 prepared to be cross examined, then we'll cross examine him.

7 We are here ready to do so, Your Honor.

8 But again, with respect to his testimony on the
9 DIP, I think all of these issues are going to be implicated
10 in because it's this reconstituted board that has approved
11 the Owlpoint proposed DIP. And so all of these issues are
12 going to be front and center in any objection to the first
13 day claim.

14 So if Mr. Rouhana is called to testify here, Your
15 Honor, we expect to cross examine with him on any and all
16 topics that are relevant to the matter before the Court. And
17 that includes the unpaid payroll tax taxes, because that, as
18 the debtors noted, that was in their plea. That's how we
19 learned --

20 MR. COOLEY: And we did. We disclosed that in our
21 -- I think it was in our wages motion and frankly disclosed
22 it for the purpose of expressing to the Court that nothing in
23 the motion was meant to seek authority to pay those amounts.
24 Obviously, any first day declarant is available, is subject
25 to cross examination. Obviously, any cross examination has

1 to be relevant to the issues actually raised in the relief
2 sought in the motions. I appreciate Mr. LeBlanc's position.

3 THE COURT: Okay. Mr. Rouhana's counsel has come
4 on the screen. So let me hear from Ms. Patterson, please.

5 MS. PATTERSON: Good morning, Your Honor. Morgan
6 Patterson, Womble, Bond, Dickinson, on behalf of Mr. Rouhana
7 and non-debtor Chicken Soup for the Soul, LLC. I'm joined
8 here today by my colleague Claire Rauscher, as well, from
9 Womble.

10 Your Honor, thank you for the time. Womble was
11 engaged about 48 hours ago to assist Mr. Rouhana. So we are
12 still finalizing our engagement and trying to get up to speed
13 on the matters here. You know, I would put simply, Your
14 Honor, I'm sure this comes as no surprise to the Court that
15 Mr. Rouhana vigorously disagrees with the characterizations
16 that have been made, both here and in the meeting.

17 And you know, we of course, leave it to the
18 debtors to support their motions that they have filed today.
19 And what we would reiterate the arguments in the debtor's
20 objection today when it came to the scheduling, we would ask
21 the Court to give Mr. Rouhana and the debtors a full and fair
22 opportunity to respond to that.

23 We would also ask, Your Honor, that if Mr. Rouhana
24 is testifying today, depending on where the hearing goes from
25 here, that myself and Ms. Rauscher are able to participate

1 and assist Mr. Rouhana in defending himself throughout that
2 cross examination.

3 We're certainly here and happy to answer any of
4 the Court's questions, but as I mentioned, we are still
5 getting up to speed. So that's all I have for Your Honor
6 today.

7 THE COURT: Okay. Thank you, Ms. Patterson.

8 MS. PATTERSON: Thank you.

9 THE COURT: Is there anyone who hasn't already
10 addressed me that'd like to be heard? Mr. Laurin, you were
11 waiting for quite a while.

12 MR. LAURIN: I appreciate that, Your Honor. And
13 it's a pleasure to be in your court. We have -- this is
14 really by way of introduction more than anything else. I
15 mean, the totality of our position is set forth in the four
16 corners of the DIP term sheet. We have labored long and hard
17 to meet the debtor where it is, and we're hopeful for a
18 positive outcome.

19 THE COURT: Okay, thank you Mr. Laurin.

20 Mr. Merola?

21 MR. MEROLA: Your Honor, thank you. Frank Marolla
22 of Paul Hastings on behalf of MidCap.

23 Your Honor, my head is kind of spinning because
24 this is a first day hearing in a publicly traded company.
25 And while there's a lot of accusations going back and forth,

1 there seem to be certain facts that are undisputed. First of
2 all, pre-petition, that was complete and total management
3 too.

4 And if I understand it right, the dispute is
5 whether the replacement of the directors and officers was
6 only in violation of the written agreements for the secured
7 creditor, or whether it was also in violation of the very
8 formation documents that controlled these LLCs.

9 We're now told that of all the things that need to
10 be delayed in the whole process, the idea that we might
11 reconstitute or put things back to where they were is the
12 issue that can trail the other substantive matters in the
13 day.

14 And Your Honor, I would submit that that's
15 incorrect. That in a world where the counsel is appearing
16 today not on behalf of the debtor, they're appearing on
17 behalf of debtor in possession, a fiduciary to all creditors,
18 not on behalf of Mr. Rouhana, not on behalf of his new board,
19 they are appearing as a debtor in possession, as a fiduciary
20 for all creditors.

21 And the idea that we have to somehow handicap this
22 hearing because the principal of a publicly traded company is
23 going to take the Fifth in his testimony for the first day is
24 all you need to hear to resolve the issue of a trustee.

25 Chapter 11 bankruptcy is not made for people to

1 run public companies when they've committed acts that require
2 them to take the Fifth on the first day.

3 Secondly, pre-petition, it doesn't seem anyone at
4 the company that was in control was very concerned about the
5 payroll or the taxes or the benefits. We see no effort in
6 the declaration of liquidity to make those payments. We see
7 no engagement with HPS on their offer to overextend to make
8 those payments.

9 And what you have here is whoever's in control of
10 the debtor has decided to hold the employees, their salaries,
11 their taxes, and their benefits hostage in a corporate
12 governance fight.

13 Now, while that would be bad enough, again, Your
14 Honor, after petition date, that's not just a fight between
15 Mr. Rouhana and the SEC and HPS. It is now a fight with us
16 because when they filed, they became a debtor in possession.
17 They are now a fiduciary.

18 What's the most distressing to me, Your Honor, is
19 not only Mr. Rouhana (inaudible) today, what's most
20 distressing to me is the idea that purportedly independent
21 directors are standing by and telling counsel to go forward
22 with a shoot the moon DIP proposal solely to keep Mr. Rouhana
23 in control.

24 Your Honor, we have to resolve the governance
25 issue before we address any of these issues. We have to have

1 credible information from inside the company regarding
2 projections and expectations and business plans. And at this
3 point, Your Honor, the trust between the debtor in possession
4 and the creditors constituencies has been ruptured. And it's
5 been ruptured in a way that I don't think is repairable.

6 So the question for you, Your Honor, is do we go
7 the reconstituting route? And I agree that would be more
8 complicated, and that would require a hearing, and that would
9 require witnesses. Or do we just take the idea that, you
10 know, the principal of the debtor is going to take the Fifth
11 on the first day declaration, and that's all we need to hear.

12 You've heard the secured creditors say they would
13 prefer a Chapter 7 trustee to the continued matter. That's a
14 pretty strong statement on the first day of the case. HPS,
15 in many ways, is the tail wagging the dog. We have a
16 security interest in a film library that we want to be
17 retained on, but the (inaudible) may not be as fortunately
18 positioned as MidCap to represent themselves.

19 There are hundreds of creditors in this case that
20 are being dragged along in the soap opera through no fault of
21 their own. And most seriously, Your Honor, the employees.
22 (Inaudible) have to do something urgently to put liquidity in
23 (inaudible) employees paid, and put a management in place
24 that is going to think about more than their own personal
25 exposure over pre and post-petition. Thank you.

1 THE COURT: Thank you, Mr. Merola.

2 Ms. Leamy, good morning.

3 MS. LEAMY: Good morning, Your Honor. Jane Leamy
4 for the United States Trustee. Suffice it to say, like the
5 others that have spoken, we have a number of unanswered
6 questions about this case. We have very serious concerns
7 about some of the relief that's sought on a first day basis.

8 This was billed to me at the hearing yesterday
9 would be an emergency wage motion only and financing in
10 connection with that. I learned shortly before the hearing
11 that the lender, the pre-petition lender, you know, had not
12 agreed to be fined. And I agree -- I'm not sure how you go
13 forward with the financing that's necessary for the wages
14 absent the consent of the lender as well as the other lender,
15 counsel that appeared yesterday.

16 So I'm not sure, you know, what the answer is, but
17 I just wanted to let Your Honor know our position with
18 respect to the motions set to go forward. Thank you.

19 THE COURT: Thank you, Ms. Leamy. Before I return
20 to Mr. Cooley -- well, let me hear from Ms. Kaminski first.

21 MS. KAMINSKI: Thank you, Your Honor. To be
22 honest, I'm really not sure where we're at because no motions
23 have really been called. But our objection was limited to
24 the motion to use cash collateral.

25 To reiterate our position again, my client

1 purchased approximately \$5 million in accounts pre-petition.
2 It is our assertion that they are not property of the estate,
3 and therefore the debtor cannot be authorized to use them
4 under Section 363. And that's sort of where we're at.

5 And again, I'm assuming we'll probably go into
6 motions more, but that's kind of our position.

7 THE COURT: Thank you, Ms. Kaminski.

8 Anybody else before I return to Mr. Cooley? Okay,
9 I hear no response.

10 Mr. Cooley, I certainly want to hear anything you
11 have to say, but you know, my primary question for you is
12 where do you want to see this go today?

13 MR. COOLEY: Judge, I'll start with that. There
14 are -- I have a lot of things I would say to question,
15 quibble with, or refute that others have said, probably the
16 most important of which, and I may come back to a couple of
17 other things, but something I want to express to you clearly
18 and probably repeatedly, is a couple of people have referred
19 to Mr. Rouhana as still being in control.

20 Mr. Rouhana resigned as CEO prior to the
21 bankruptcy filing, and the board, comprised of five
22 individuals, at the time of which Mr. Rouhana was only one,
23 appointed Bart Schwartz as CEO. Mr. Schwartz is present, I
24 believe, and on the line with us today.

25 Mr. Schwartz is 100 percent in control and has

1 been actively in control of this for the last several days.
2 And as I understand him to be, and his experience to be, he
3 is both experienced and independent. Mr. Schwartz, in
4 addition to having extensive board experience, served for
5 three years as the DOJ appointed monitor for General Motors
6 in connection with the deferred prosecution of settlement of
7 charges relating to the defective ignition switch cases.
8 This is someone who is comfortable with and experienced with,
9 frankly, investigating internal claims.

10 He also served as a senior member of the team
11 assisting University of Michigan with implementing
12 remediation after their sexual harassment situation of
13 several years ago.

14 He's joined by others by the board, including Mr.
15 Stephen Goldsmith, who has substantial personal expertise in
16 the development and monetization of media assets. In other
17 words, Your Honor, we would submit -- and Mr. Schwartz can
18 speak to this further if and when the Court should deem that
19 useful -- about both the experience and the expertise of this
20 board.

21 And I think what he would also tell the Court, in
22 very clear, unambiguous language, is that Mr. Rouhana is not
23 presently in control of this company.

24 And so, setting aside all of the allegations of
25 all of the conduct and all of the things that occurred prior

1 to the filing, an independent board of non-insiders is in
2 control of this case, led by a non-insider, independent, Mr.
3 Schwartz. And I just wanted to say that at the outset.

4 To your question, Your Honor, I always find it
5 best not to talk about what I want to talk about, but what
6 the judge wants to talk about. The thing that we are and
7 have been most focused on through this process is precisely
8 what Your Honor just said, the payment of employees.

9 And frankly, I could go through the company's
10 version of the events of the forbearance and the events that
11 followed. And counsel is right, not everything was in the
12 first day declaration. And I'll confess, the Court may have
13 picked up on this from the filings. This was a very, very
14 accelerated preparation, and a first day declaration is
15 ultimately not an SEC public filing. The company's public
16 filings were complete.

17 And so there were a lot of comments about
18 disclosures and things that were not disclosed. And I want
19 to make sure we're drawing a distinction between public
20 filing disclosures that are required by the SEC, which I
21 believe have at all times been complied with, and things that
22 may or may not have been included in the first day
23 declaration, which is fundamentally an optional document.
24 And frankly, we were pressed on time.

25 But this case was -- this case has fundamentally

1 been a function of the fact that over the last couple of
2 weeks, the company's condition deteriorated to such a point
3 that it became necessary to take this action, frankly, in an
4 effort to get the financing necessary to, for starters, take
5 care of our employee payroll, both the one that was due June
6 21st and the one that is coming due this Friday, to reinstate
7 the health insurance benefits, which must be a terrifying
8 prospect for anyone in this country to suddenly find
9 themselves without health insurance.

10 These are the issues that counsel and the board
11 are and have been laser focused on, and that is job one. I
12 heard Mr. Dunne describe some of our efforts and discussions
13 recently, and he described at one point that HPS would be
14 willing to, I think I heard him say, that he would be willing
15 to put forth an alternative DIP proposal that would give the
16 company \$8 million to cover payroll today. I thought I heard
17 him say that, and he'll shake his head vigorously if I
18 misheard him.

19 I think that's certainly interesting. The great
20 question would be, what happens next? Because the company
21 sorely needs to make last week's payroll. It sorely needs to
22 make this week's payroll, and it sorely needs to stabilize.

23 Counsel pointed out that there had been a notice
24 of foreclosure prior to bankruptcy, and in fact, that one of
25 the relief they sought is a motion to convert the case to

1 Chapter 7. I note they did not ask the Court to dismiss the
2 case outright and simply let them proceed with their
3 foreclosure to simply take the libraries and go. And I
4 imagine that's because whatever their questions may be about
5 the present condition of the company, there is a belief that
6 it is better to stabilize this business and see what can be
7 done to maximize its value as a going concern, rather than to
8 simply have a secured lender pluck the film libraries out of
9 the smoldering pile of ash and see what it can get for those
10 film libraries in isolation.

11 My sense is that the nature of the relief sought
12 in the motion to reconstitute strongly suggests that HPS
13 believes that this company is better off stabilized. And so
14 if HPS is indicating that they want to simply cover today's
15 payroll as a first step, that is certainly an interesting
16 proposal. I'm certain it's something that caught the Court's
17 attention.

18 But it simply begs the question of what happens
19 tomorrow. If they're proposing to put in a full DIP to fund
20 the company through a 13-week cash flow, that's probably a
21 conversation that any independent board would want to have.
22 And we welcome any conversations between the principals of
23 HPS and the board that anybody would like to have happen.

24 But anything that's -- getting people their
25 payroll is job one for all of us. We're here to do whatever

1 we can to accomplish that. But it will be a pyrrhic victory
2 if we find a way to cover everyone's payroll and still send
3 them all home at the close of business today.

4 I'll pause there for a moment, Your Honor. As I
5 said, I could go through a list of other things and talk
6 about the forbearance and the events leading up to the
7 Chapter 11, but my sense is the Court wants to stay focused
8 on the most pressing issue.

9 THE COURT: Yeah, I do. I do want to stay focused
10 on that.

11 MR. COOLEY: Judge, If I could. Let me just note
12 that one video monitor that just turned on, Your Honor, the
13 good-looking gentleman in the mustache is Mr. Bart Schwartz,
14 who is our CEO And one of the members of our current board of
15 directors, and I just wanted to point that out to the Court.

16 THE COURT: Good morning Mr. Schwartz and welcome.

17 MR. SCHWARTZ: Good morning, Your Honor. Thank
18 you, and I appreciate the opportunity to speak briefly.

19 THE COURT: That'll be okay.

20 MR. SCHWARTZ: Briefly. I've been a lawyer for
21 many years. I ran the criminal division in Southern District
22 of New York. And I like to think that I do the right thing
23 and try to do the right thing.

24 I asked the counsel and others to tell me what
25 path does the judge have to make sure that we get the

1 employees paid and then they get the medical insurance. And
2 the more I listen and the more I hear, I think the path may
3 fall to me to find a way to do it.

4 You started this hearing by saying you hope there
5 might be some discussion. I did this morning call Mr.
6 Wallach (phonetic) at HPS and have a brief discussion with
7 him. And perhaps a good start. A little late. I've only
8 been at this a few days, perhaps a little late in the
9 process. But I'm making my effort to make decisions for the
10 other members of the board. But the primary goal being to
11 take care of the employees.

12 Mr. Rouhana is not in charge. As a lawyer once
13 said, I'm not a potted plant. I'm here to get the work done
14 and get it done correctly. So I'm not familiar with all the
15 procedures in Bankruptcy Court. I'm not familiar with what
16 needs to be said or done today.

17 But I think that if we can get that payment now,
18 approximately \$8 million, to take care of the employees, then
19 I could sit down with HPS and work through the problems.
20 They actually have the same problem I did. We don't know how
21 bad this is. And there are troubling things that were
22 mentioned today, which I've asked others about myself.

23 So I'd like the opportunity to find the path to
24 take care of the employees. Thank you.

25 THE COURT: Thank you very much, Mr. Schwartz.

1 MR. DUNNE: Your Honor, may I be heard in response
2 to this?

3 THE COURT: Certainly, yes.

4 MR. DUNNE: Thank you. So just a couple points.
5 One, in the interest of full disclosure, and this goes
6 (inaudible). Mr. Schwartz, who just spoke, is actually the
7 father of a Millbank partner. We had -- one of my litigation
8 partners is his son. We obviously had no involvement in his
9 appointment or selection. But I did want to just note that
10 family connection.

11 The other point that -- and I can't believe we're
12 talking this, but we know that Mr. Rouhana resigned as CEO,
13 he remains as chairman of the board as the largest
14 stockholder and that there are -- that his one vote on the
15 board is a minority in the -- among the directors that are
16 there as one of (inaudible).

17 And our issue has been and as you can see it from
18 Mr. Pachulski's comments, the behavior of what we felt were
19 truly independent directors and those who are still -- have
20 been brought in late in the game, and we've seen evidence of
21 them doing Mr. Rouhana's bidding.

22 But the point is, we're happy to have a
23 conversation with Mr. Schwartz or whomever. We've offered
24 the funds to make those payments for employee payroll and the
25 insurance, and we think we should continue to have those

1 discussions.

2 What would accelerate it would be, and I don't
3 know how we get there, maybe we need to hear it forward, is
4 if the debtors knew that the only viable path is to make a
5 deal with us, I think we'd have a deal done in a few hours.
6 If they think that every term they don't like, there may be
7 an opportunity that the Hail Mary DIP is caught in the end
8 zone and that they can go to the Owlpoint DIP, we're going to
9 be doing (inaudible), I suspect, over several days. I don't
10 know how to deal with that -- deal with that issue.

11 We think it's patently not a primeable DIP, but we
12 haven't gotten to the motion, but I think it would be helpful
13 to get some evidence or ruling on that because it'll just
14 focus on executable paths as opposed to every path, one of
15 which you don't believe is executable.

16 THE COURT: Thank you, Mr. Dunne.

17 Mr. Cooley, any response?

18 MR. COOLEY: I don't think so, Your Honor. I'm
19 really glad that Mr. Schwartz had the opportunity to address
20 the Court just there, and I appreciate Mr. Dunne's comments.
21 And if what we need to do is go and have further discussions
22 with them, we can absolutely facilitate that.

23 One thing I will note is, while it is true that
24 Mr. Rouhana has -- continues to be the chairman of the board,
25 the three board members who are not either Mr. Rouhana or

1 otherwise an insider of the company, the other, the fifth
2 board member is the CFO of the company, Chris Mitchell. So
3 the three board members who are truly independent are the
4 three that I have been dealing with, at least, in all of my
5 recent actions, in all of Reed Smith's recent actions over
6 certainly the last few days.

7 And so I just want to make sure the Court
8 understands that the people that are directing actions right
9 now are, in fact, a collection solely of independent
10 individuals like Mr. Schwartz. And I just wanted to provide
11 that added color.

12 MR. SCHWARTZ: Your Honor, may I just say one
13 further thing?

14 THE COURT: Yes.

15 MR. SCHWARTZ: Usually I'm the one who tells
16 everyone that my son is a partner. But I make my -- I said
17 what I said in good faith. No, we're not looking for
18 technicalities. We're not looking for ways to take advantage
19 of the situation. Got to find a way to take care of these
20 employees.

21 THE COURT: Thank you very much.

22 Okay, here's what I'm going to suggest we do. I'd
23 like to adjourn to 3 o'clock this afternoon. I'd like you to
24 use the time to see if you can come to agreement on a DIP
25 that will take care of the employees. Again, that is my

1 primary concern at this point.

2 There are much bigger problems that we're going to
3 be able to solve in the next five hours, and I think it's
4 quite likely that in the absence of a negotiated resolution,
5 in the meantime, we're going to need to get through the HPS
6 motion to be able to determine all the issues.

7 But I would like you to spend the next five hours
8 or so working on the issue about the employee wages, and if
9 you get a deal done, then great. If you don't, again, I'll
10 just reiterate, based on what I've seen, I'm not prejudging
11 what evidence may come before me, but I just can't imagine
12 how we get to approval of a priming DIP today.

13 I think everybody on this hearing understands that
14 that's probably a fairly unlikely outcome. So why don't you
15 work on that. If there are any updates that you feel the
16 Court needs during the day or that might require my
17 assistance, please reach out to chambers.

18 I've got a 1 o'clock hearing that I expect to take
19 probably less than an hour, but other than that, I'm at the
20 parties' disposal. But that's what I would like you to do
21 for the rest of the morning.

22 MR. COOLEY: We will turn to that immediately,
23 Your Honor. May I perhaps close by asking my friend, Mr.
24 Silberglied's question from yesterday, may we all use -- will
25 we all need to re-register if we come -- if and when we come

1 back at 3:00? Or will we be able to use these logins?

2 THE COURT: I think this would just be considered
3 a recess, and we'd be able to use the same login, but I'm
4 just awaiting word from my courtroom deputy, who's typing as
5 we speak. I'm looking at the dancing bubbles and (inaudible)
6 with the responses. We can use the same link. Okay?

7 MR. COOLEY: Very good, Your Honor. Thank you.

8 MALE VOICE: Thank you, Your Honor.

9 THE COURT: Thank you very much. So we're in
10 recess until 3:00 p.m. Eastern.

11 (Recess taken at 10:07 a.m.)

12 (Proceedings resumed at 3:00 p.m.)

13 THE COURT: Good afternoon. We're back on the
14 record in Chicken Soup for the Soul Entertainment.

15 Mr. Cooley, are you there?

16 MR. COOLEY: Yes, Your Honor, I am. Good
17 afternoon.

18 THE COURT: Good afternoon. So what's the good
19 word?

20 MR. COOLEY: I'm pleased to say, Your Honor, we
21 just got right to it. I'm pleased to say that there is a
22 word.

23 This has been a long couple of days since we filed
24 Friday night in a hurry and with a priming DIP and everything
25 else that came along with it.

1 But I want to give a lot of credit to the Milbank
2 team who has continued to work with us through this period
3 and, frankly, when we tried to reset the dialog with them,
4 which has been a difficult one at times over the last several
5 months, they gave us that chance and, you know, our
6 discussions with them over the last few days, while it was
7 challenging and contentious, have been exceedingly productive
8 the whole way through and I really do appreciate their
9 efforts.

10 We, through our discussions with them aided by the
11 observations the Court made toward the end of the hearing, we
12 have been able to arrive at terms with the lender, with HPS,
13 for a proposed consensual post-petition financing arrangement
14 to be provided by HPS to the debtors on the terms set forth
15 in a DIP term sheet, which is essentially a document that is
16 the same document that we started with under the forbearance
17 agreement that was -- and then has been since modified, in
18 part, to accommodate certain of the new terms and agreements
19 reached and, in part, also to accommodate the fact that the
20 original document contemplated a bankruptcy case to be filed,
21 whereas now, of course, we are in the bankruptcy case that
22 has been filed, a lot of past tense -- or future tense to
23 present tense, if you will.

24 I could walk through as much or as little of the
25 details of it as the Court likes, but at a high level, the

1 proposed financing arrangement involves an interim request of
2 -- in the amount of \$8 million, and I can walk through --
3 walk the Court through how we came up with that figure, but
4 that is essentially the amount necessary, based on the
5 debtor's DIP budget that was filed earlier in the case,
6 necessary to get back on track with payroll, attend to a few
7 other critical expenses, and basically stabilize things
8 enough that we can focus on getting the company
9 stabilized and moving forward with Chapter 11.

10 As the Court said, as we all believed since the
11 start, that was job one, and I'll walk through the dollar
12 amounts, but that is the -- an interim financing amount.

13 The final amount is an amount yet to be determined
14 but to be sought for approval, I believe, as a practical
15 matter, when we come back for a final hearing.

16 And the reason, essentially, that it's like that
17 is that, you know, right now, as I think HPS expressed
18 earlier today, HPS doesn't know what it doesn't know yet and,
19 candidly, based on some of the events over the last couple of
20 days, I can't say to a certainty that I don't know what I
21 don't know yet.

22 And so rather than put in place a fixed dollar
23 amount over the next week or so as we get from here to a
24 final, the parties can work together to determine what the
25 right amount is to move the company forward consistent with

1 the concepts laid out in the rest of the DIP term sheet.

2 That could be less than what's in the budget that
3 was filed and it could be more and I think that's sort of the
4 point of the exercise is that, hopefully, we'd be able to
5 come back to you smarter for having that time and then we'll
6 seek final approval.

7 There -- the form of the loan is going to be in
8 the nature of a revolver, such that amounts repaid can be re-
9 borrowed. And as I read this, once upon a time back in the
10 forbearance term sheet, there was actually a rollup
11 associated with it and I want to tell the Court that, based
12 on the redline I got -- and Mr. Leblanc is going to flinch if
13 I'm reading this incorrectly, but the rollup has been
14 eliminated, and I thank HPS for that.

15 So it's just a -- to begin with, an \$8 million
16 revolving loan protected by -- on a super priority basis, of
17 course, protected by all of the traditional means under
18 364(c)(2) and (c)(3) and (d)(1), with HPS consenting to its
19 own priming.

20 Use of proceeds, there had been some prior
21 discussions about whether the use of proceeds would include
22 payments allowable in accordance with the budget to the
23 Chicken Soup parent for what has been described as other
24 motions that operate as some necessary operating expenses.

25 For the time being, that has been stricken. I

1 think if I understand correctly, as -- again, as a function
2 of HPS wanting to understand what those amounts are, I'm
3 confident if the company and HPS determine that those are
4 amounts that are necessary, we know how to find the Court to
5 get approval and, if not, then we'll deal with that in due
6 course.

7 There will be a budget attached to it, as I said.
8 The liens are the traditional means under 364(c) and (d).
9 There are provisions, of course, for the professional fees of
10 the DIP lender, the pre-petition lender, to pay for adequate
11 protection to be provided to the DIP lender as well, and a
12 maturity time to the earliest to occur of sort of a four-
13 month baseline, the consummation of one or more sales,
14 termination event, and so forth. So it gives us a basic
15 runway. And then there are other planned milestones for the
16 parties to begin to work toward and undertake one or more
17 sale processes. Obviously, to the extent that the parties
18 don't, over the next few weeks and months, determine that
19 some other path may be more beneficial to creditors, there is
20 a baseline. It is a sale-based series of planned milestones.

21 One other significant item in here, because it's
22 the first thing I'm going to describe, that you wouldn't
23 normally find in a DIP term sheet regards corporate
24 government -- corporate governance. Excuse me.

25 Under the agreement, a Strategic Review Committee,

1 along the lines of that that existed prior to the bankruptcy
2 filing, will be reinstated. The membership will be three
3 members. Mr. John Young and Robert Warshauer, who were HPS'
4 two designated pre-petition independent directors, and the
5 third member of the Strategic Review Committee will be Bart
6 Schwartz, who appeared before Your Honor earlier today.

7 Once that committee is formed, then Mr. Schwartz
8 will resign as CEO and the Board, or the Strategic Reivew
9 Committee, will then appoint a new CEO. And I think that
10 there may have been some preliminary discussions about who
11 that might be and what sort of skill set that might entail,
12 but I'm going to leave that for the Board to sort out in the
13 coming days.

14 The -- and that's the -- that's kind of the key
15 elements in here. I just want to flip through the rest of
16 the term sheet and, obviously, Your Honor, we'll get this on
17 file with the Court, of course, earliest opportunity. I
18 confess we got this finalized with the documentation about 11
19 minutes ago.

20 Let me see. I'm just sort of flipping through to
21 see if there are any other high points.

22 As far as the economics of it, there -- the DIP
23 facility provides for interest to occur -- accrue, excuse me,
24 at a base rate no less than -- at either the define based
25 rate, plus 9 percent or at SOFA, plus 10. I think that will

1 be fleshed out a little bit more with interest to be paid --
2 payable in cash monthly. And then there will also be a
3 closing fee equal to 3 percent of the aggregate principle
4 amount committed and an undrawn line fee of 1 percent. And I
5 can represent to the Court, just from the redline I'm looking
6 at, that these were the same -- these are essentially the
7 same economics that were in the original deal that was
8 included with the forbearance agreement. These were
9 customary agency fees, reimbursement of professional fees,
10 and so forth.

11 So that, as a high level, is where we are. It is
12 my understanding, and Mr. Leblanc will hopefully corroborate
13 this, that this resolves our present issues with respect to
14 the debtor's request for access to cash collateral and post-
15 petition financing. And it is my understanding that this
16 also will resolve the issues and requests for relief raised
17 in the motion for reconstitution that was filed by HPS
18 seeking the various forms of relief described therein.

19 So it's the debtor's belief that, in entering into
20 this, the debtors will retain access to urgently needed
21 capital to take care of their employees and, more importantly
22 perhaps, a path forward to additional liquidity to be
23 provided by HPS in an amount to be determined and a control
24 structure that will bring both sides, I think, together more
25 closely than perhaps we have been in past months to work

1 together going forward so that the path that the debtor
2 ultimately takes and the exit that we ultimately pursue,
3 whether it is the sales that are planned or some other path,
4 is going to be one that I hope is the most beneficial to all
5 stakeholders, to HPS, to employees, to unsecured creditors
6 who are of enumerable numbers right now, and all other fee
7 stakeholders in the case.

8 Judge, we're very pleased with the outcome and
9 that's sort of where we are.

10 I'll yield the podium in just a moment, but from a
11 process standpoint, Your Honor, Mr. Schwartz is on the line,
12 and so at the appropriate time, if the Court would like a
13 brief proffer of evidence just to sort of close the loop,
14 we'll be happy to do that. Obviously, at this point, I think
15 we're all most concerned about is this moving forward for the
16 benefit of employees, but we are prepared for that if the
17 Court wishes.

18 THE COURT: Okay.

19 MR. COOLEY: So with that, I'll stop and yield to
20 the Milbank firm for comments.

21 THE COURT: Okay. Mr. Leblanc?

22 MR. LEBLANC: Good afternoon, Your Honor. Andrew
23 Leblanc, of Milbank, on behalf of HPS.

24 Mr. -- Your Honor, Mr. Dunne has a conflict right
25 now but he'll -- I think he'll be joining us shortly. But,

1 for now, you're -- you'll be stuck with me.

2 Your Honor, I can confirm what Mr. Cooley
3 described, but I have -- and I just -- I want to make a few
4 clarifications. I think this was clear, but the amounts that
5 we're funding are sufficient not just to pay the payroll
6 amounts, but also to reinstate the health insurance premiums.

7 THE COURT: Yes.

8 MR. LEBLANC: So we -- the number that we've been
9 given was -- the \$8 million was provided to make sure that
10 those employee issues are the first things that are dealt
11 with.

12 The -- in the term sheet that we've drafted, Mr.
13 Pachulski pointed out to us that we have a prohibition in the
14 term sheet on payments made to board members or shareholders.
15 That's obviously with the legacy and corporate governance.
16 With the SRC coming in and controlling the company, we're not
17 going to prohibit payments that are -- when they're due to
18 SRC members. We can make that change, Your Honor.

19 Mr. Cooley correctly described the governance
20 changes, but I just want to emphasize a couple of things.

21 Mr. Young and Mr. Warhauser were approved by HPS.
22 They weren't designated by HPS. That's a minor point. We do
23 not have designation rights. They were approved by us but
24 actually put on by the shareholder and we approved their
25 being put on again, reinstated to the SRC. But the documents

1 and the order will be clear that the SRC has the control over
2 the debtor, the case, you know, everything that's happening
3 here and can't be removed. We're -- obviously, with the
4 history that we've had here, that's a critical proponent for
5 us.

6 The trade, if you will, Your Honor, we were
7 prepared to make is we were going to fund these amounts but
8 only with the governance that we think is appropriate, and
9 the debtors have now agreed with that.

10 With respect to the motion to reconstitute, Your
11 Honor, I -- we certainly -- the motion to shorten I think has
12 been mooted. We don't need to schedule a hearing on the
13 motion to reconstitute. We'd like to get through the rest of
14 the First Day motions before -- we'll decide when to withdraw
15 or whether to withdraw that. But at this point, I don't
16 anticipate we prosecute that objection or that motion, Your
17 Honor, given the governance changes that have been agreed to.

18 The -- it's our understanding, and the debtors can
19 correct us if this is wrong, but that none of the payments
20 that are being contemplated to be made here are going to be
21 made through non-debtor entities. That was one of the
22 concerns that we had in -- both in the cash management order
23 and the wages motion, the management services motion. All of
24 those had some contemplation of dollars going through non-
25 debtor entities. Obviously, that wouldn't be acceptable to

1 us. These are payments being made by the debtors for the
2 debtor's employees.

3 Your Honor, I did want to be clear -- Mr. Cooley I
4 think said this, but I just want to be crystal-clear. Given
5 the level of uncertainty that we have today about the
6 company's assets and about the status of the amount of the
7 secured debt that they have, because we've heard a number of
8 people get on the line and say -- and raise arguments that
9 they have security interests in the debtor's collateral, we
10 are contemplating -- this is proposed to be consensual
11 priming as to us, but not a consensual priming as to all
12 other secured lenders.

13 So if we -- the important thing for HPS, Your
14 Honor, is we are lending \$8 million to this debtor at a time
15 of great uncertainty. The SRC will be in control. They'll
16 select a new CEO and they will make decision on how to
17 disburse that cash with the focus on paying the employees.

18 HPS wasn't in a position to put at risk that \$8
19 million. If there are liens -- because there are liens that
20 have been announced over the course of the last two days that
21 we were completely unaware of. And so it is contemplated
22 that this is a priming facility and we expect and hope that
23 we will work out all of these issues between now and the
24 final, but HPS wasn't comfortable putting at risk the \$8
25 million of funding because of the tremendous uncertainty as

1 to -- and the amount of people who have spoken up saying that
2 they have liens on the debtor's assets.

3 We don't know and, obviously, if there's hundreds
4 of millions of dollars of HPS collateral, that will be
5 sufficient to satisfy this DIP loan and we'll be fine with
6 that. We just don't know today what other liens other
7 parties are going to assert in light of the conduct of the
8 debtors over the course of the last nine months.

9 So I hope Your Honor understands that that's how
10 it is proposed by us, and certainly other parties may want to
11 be heard, but I didn't want that to be unclear to anyone and
12 I wanted to be crystal-clear about what we are proposing in
13 this DIP.

14 Your Honor, my partners, Mr. Pisa and Mr. Brod,
15 are also on. I have not seen any emails telling me that
16 we're missing anything else and so others may come up, but
17 that's the totality of the agreements that we've reached.

18 We -- I'll echo Mr. Cooley's comments that it has
19 been useful to engage in this dialog. We've moved a long way
20 compared to where we have been over the course of the last
21 several months. Your Honor, at some point, may see the
22 letter exchanges between us, but it's a -- hopefully, this is
23 the start of a new dialog with Chicken Soup for the Soul and
24 its largest secured lender, HPS.

25 THE COURT: Very good. Thank you Leblanc.

1 MR. COOLEY: Judge, if I could piggyback just on
2 the last point, or maybe it was the second to the last point
3 that Mr. Leblanc made?

4 At least one of the secured creditors that stood
5 up the other day was new information to me as well, and so we
6 are working through some of those issues also.

7 We obviously understand HPS' position with respect
8 to the priming and what I want to say to the Court is, at the
9 same time, we, as debtors, also recognize that there are
10 adequate protection issues that we may need to work through
11 for one or more or all of those secured creditors who stood
12 up the other day and it is our expectation that over the next
13 whatever it is, two weeks between now and the final or what
14 have you, that we will be engaging with each of them. We've
15 already reached out to some of them, at least as recently as
16 yesterday, to try and make sure we understand exactly what
17 those claims are -- I know that's important to Milbank also,
18 and what the rights are that are asserted and then to figure
19 out how best to work with those in the context of this
20 financing arrangement.

21 But we recognize there are adequate protection
22 issues that still may have to be worked through and we are
23 committed to doing that.

24 THE COURT: Thank you, Mr. Cooley.

25 Mr. Pachulski, you've been waiting patiently.

1 Would you like to be heard?

2 MR. PACHULSKI: Your Honor, I think, actually, Mr.
3 Cooley and Mr. Leblanc have stated where we are, which I
4 think is a real positive.

5 The one thing I want to comment on, and I don't
6 know what Mr. Cooley's thoughts were on this because we
7 haven't spoken about it, but there are other First Days that
8 are on. I have -- frankly, and now that the SRC has been
9 changed to flip one member of the SRC who will be stepping
10 down, who is the independent originally selected by the
11 debtor, that had been on the board previously by now Mr.
12 Schwartz, and so I'd at least like the opportunity before
13 those motions go forward to speak with them and to confirm
14 that they would be appropriate in light of the fact they are
15 now -- as Your Honor will see with respect to the term sheet,
16 they are the ones who will now be making decisions on issues
17 like that.

18 So I don't want to have it lost in the process. I
19 think it is a very fair deal for all concerned and the big
20 issue and where the SRC at least had numerous conversations,
21 particularly with Mr. Warshauer and with Mr. Young, are very
22 satisfied that we can move forward in a thoughtful way and
23 try to get the best possible result for the various
24 constituents in the case, Your Honor, so I appreciate Your
25 Honor calling on me and asking for where we are.

1 But I think we're in a positive place, but I am a
2 little nervous about letting motions go forward that the --
3 what is effectively now the board has not really opined on.

4 MR. COOLEY: Judge, I can speak to that. I had
5 given that some thought this afternoon as well and we
6 recognize that not only is there that issue, but there's also
7 the fact that, you know, ordinarily, HPS, as the pre-petition
8 lender, would have been involved through the preparation of
9 the First Days and, obviously, that wasn't the case here and
10 I suspect that they might find it useful if we had the chance
11 to walk them through some of them and make sure we've
12 answered their questions and provided the information they
13 need.

14 For today's purposes, aside from wages and DIP,
15 which are the two obvious ones, the one that I would really
16 like to do if we could, because I think it will be
17 administratively helpful for everyone, is if we could knock
18 out joint administration because, at the moment, we still
19 technically have 22 separate dockets and I know we have been
20 behaving as though we have one, but I suspect that the
21 clerk's office would really appreciate it because that would
22 --

23 THE COURT: Yes, they certainly would.

24 Okay. Well, I'll tell you what. Let me get
25 through the comments from some of the other parties that want

1 to be heard and then we'll go back to the agenda insofar as
2 we can do the agenda today.

3 So first let me hear from Mr. Larin, please.

4 MR. LARIN: Thank you, Judge Horan.

5 Again, Paul Larin, on behalf of Owl Capital
6 Management, the prospective DIP lender under the pending
7 motion. I'm also here with Kevin Collins, my colleague in
8 Delaware.

9 Your Honor, we are pleased -- obviously, we are
10 pleased that the enterprise seems to be presenting a path
11 forward to the Court.

12 I simply want to speak to protect and preserve our
13 rights under the current DIP motion and the proposed DIPI
14 term sheet to assert our breakup fee claim as a stalking
15 horse-type lender.

16 Now, it is an exotic, somewhat unusual, request in
17 this setting. I think the Court has certainly heard over the
18 last couple of days, and the characterizations of the movable
19 object and the irresistible course, that something had to
20 break the deadline and I would submit, Your Honor, it was the
21 participation of my client, after much effort, much hard
22 work, assisting with the preparation of the DIP motions.

23 We just want to make sure that one of the things
24 that doesn't get lost here as the Court deals with the
25 pending DIP motion, is our negotiated contractually provided

1 right to a breakup fee.

2 THE COURT: Understood. Thank you.

3 Mr. Merola?

4 MR. MEROLA: Your Honor, Frank Merola, on behalf
5 of MidCap.

6 Obviously, we're very happy that the senior --
7 that the secured creditor, the primary secured creditor and
8 the debtor have come around on both governance and the
9 liquidity solution.

10 Unfortunately, Your Honor, we can't let them do
11 that on the back of other secured creditors.

12 In 2021 when HPS put their money in place and put
13 their loan in place, my client's claim was already there.

14 The idea that HPS, as sophisticated as they are,
15 advised by such sophisticated counsel, "didn't know the lien
16 was there", we're insolvent.

17 On Friday evening when we opened up these
18 pleadings, we had a priming DIP and it was a priming DIP of
19 the HPS loans, Your Honor, only the HPS loans.

20 In those documents was the concept of permitting
21 encumbrances and permitting encumbrances were liens that had
22 existed, other than the HPS' lien, that would not be prime.

23 So if the solution that was reached, without any
24 papers on file by the way, Your Honor, goes from a priming
25 loan that did not affect other secured creditors to a priming

1 loan that primes all secured creditors, with no evidentiary
2 showing as to adequate protection, I think we're all going to
3 have a problem here.

4 While we're eager to see the employees and the
5 benefits paid, we still have to observe the procedures and
6 the policies of 364 and 363 here, and this falls short.

7 To the extent they want to reserve the right to
8 request priming on a final, I think that's completely
9 appropriate. But to the extent they want prime from the
10 First Day, from the first dollar, that's not acceptable.
11 There's not been a showing that would justify that and
12 there's nothing in the record that would allow Your Honor to
13 make that finding of adequate protection to other secured
14 creditors.

15 THE COURT: Okay. Thank you, Mr. Merola.

16 Mr. Ahdoot?

17 MR. AHDOOT: Thank you, Your Honor. David Ahdoot,
18 of Bush Gottlieb, on behalf of the Directors Guild, the
19 Actors, and the Writers. We can just refer to them as
20 Guilds.

21 Your Honor, my clients are in an interesting
22 position in the sense that we are secured creditors, but we
23 are also labor unions, and from that perspective, we're
24 gratified, and in the midst of all of these very serious
25 issues, the parties are focused on employee obligations and

1 we're very pleased to see that that issue has been brought
2 out front and center and there seems to be a pathway to a
3 resolution there.

4 That being said, we haven't been involved in any
5 discussions beyond cursory ones with respect to our
6 collateral usage or cash collateral usage and adequate
7 protection. We appreciate Mr. Cooley's comments that he
8 understands and he'd be reaching out to work those things
9 through.

10 And, Your Honor, we're sort of in a tough position
11 here as, you know, I'm certain my clients would not want to
12 stand in the way of making sure these employees get paid and
13 get paid speedily. On the other hand, you know, we've got a
14 lot of issues that haven't been addressed with respect to our
15 interest in the motion for cash collateral. From that
16 perspective, I think the right position for us to take is to
17 revert in our status as senior secured and, again, applaud
18 the efforts of the parties to try and reach a consensual
19 solution and commit to them all that we're here and we're
20 ready to engage to find those solutions as fast as possible.

21 THE COURT: Thank you, Mr. Ahdoot.

22 Is there anybody else that would like to be heard
23 before I return to Mr. Cooley?

24 (No verbal response)

25 THE COURT: Okay. Mr. Cooley?

1 MR. COOLEY: Yes, Your Honor.

2 THE COURT: Okay. Well, it seems to me that what
3 we can do is go ahead on joint administration.

4 When it comes to the DIP, it seems like that's
5 something that's got to be documented and presented, and we
6 can certainly hear that in short order. Clearly, the other
7 secured creditors are hoping to hear from you and have a
8 discussion.

9 You know, to Mr. Merola's comments, it would be
10 unusual indeed to have non-consensual priming on the first
11 day of the case. So I'm sure you're not -- I'd be surprised
12 if you were contemplating seeking something like that, but we
13 will certainly see what it is that ultimately you'll propose
14 and we'll go ahead with the hearing on that.

15 But I think at this juncture, we can do joint
16 administration and then talk about your expectations on
17 getting a new DIP motion on file and putting together a
18 prompt hearing for that.

19 Does that sound about right to you?

20 MR. COOLEY: Certainly, we can certainly up the
21 DIP -- excuse me, joint admin first and knock that out. I
22 think that's -- I think we all agree that's pretty easy.

23 And then, at the appropriate time, the wages as
24 well. I guess the question would be how fast to do it most
25 expeditiously. So I'll just simply start with joint

1 administration, Your Honor.

2 This is the debtor's motion for joint
3 administration of the cases of Chicken Soup for the Soul
4 Entertainment, Inc. and its 21 affiliates, which have all
5 filed voluntary Chapter 11 cases here in the Northern
6 District -- or excuse me, the District of Delaware.

7 This one doesn't require much commentary. They
8 are all affiliates as defined under Section 1012 of the
9 Bankruptcy Code permitting joint administrations are
10 warranted to ease administrative burden under Bankruptcy Rule
11 1015, Tab 1.

12 This is ordinary relief in this sort of a case and
13 I believe that this order has already -- this was one of the
14 ones that was socialized with the Office of the United States
15 Trustee and Mrs. Leamy prior to its filing and so I hope that
16 she will be able to confirm that this included that our order
17 -- proposed form of order included the comments that she did
18 provide to us and I -- she should also not go unnoticed to
19 this, Your Honor. We put a great deal of demand on her both
20 on Friday evening and over the weekend and she rose to the
21 challenge to the very first order.

22 Anyway, so assuming we have all those covered, and
23 I believe we do, then we would ask for entry of the order
24 administratively consolidating these cases in the form that
25 was filed, together with the motion at Docket Entry 6.

1 THE COURT: Okay. Ms. Leamy, any comment on the
2 joint administration motion?

3 MS. LEAMY: Your Honor, Jane Leamy, for the U.S.
4 Trustee.

5 Just to confirm, I have no objection to entry of
6 that order.

7 Thank you.

8 THE COURT: Thank you. Is there anybody else that
9 would like to be heard regarding the joint administration
10 order?

11 (No verbal response)

12 THE COURT: Okay. I hear no response. It is, of
13 course, a routine motion and, under the circumstances of
14 these cases, I have authority to grant that relief under
15 Bankruptcy Rule 1015(b) and Local Rule 1015-1 and, therefore,
16 I grant the motion and will enter the order.

17 MR. COOLEY: Thank you, Your Honor.

18 THE COURT: Okay. And well, as for the rest of it
19 -- well, how do you --

20 MR. COOLEY: As for the rest of it.

21 THE COURT: Yeah. How do you suggest we --

22 MR. COOLEY: So --

23 THE COURT: Go ahead.

24 MR. COOLEY: Well, in a perfect world, I would
25 present it all right now and try to (indiscernible) deadline.

1 But I appreciate the comments made by counsel and also the
2 comments of the Court as well and if I -- if I'm
3 understanding the Court correctly, and I think, properly,
4 given the procedural issues here, that notwithstanding the
5 exigency of taking care of employees, I think that employees
6 will be able to take at least brief solace in the fact that
7 we have a path and a consensual agreement reached with our
8 lender, our primary lender, and so I'm going to be moving in
9 short order to get it approved.

10 If we -- I can tell the Court that we have a term
11 sheet, that we have a proposed interim order already and so,
12 you know, if we need to get a fresh motion on file, I would
13 imagine that we could put together a very simple form of
14 motion very quickly. I cannot imagine it would be on file
15 any later than tonight. And, frankly, in large part, it will
16 probably be something we could do -- swapping out terms with
17 the motion already on file, although Milbank may tell me they
18 already have a form in the wings. We haven't gotten that far
19 yet.

20 But in any event, I am confident we can put it
21 together quickly and see no reason why we couldn't have it on
22 file as early as tonight.

23 Based upon the terms of this DIP, as I understand
24 it, and it may be -- maybe it's better if Mr. Leblanc speaks
25 to this particular issue, vis a vis, the priming. I know

1 that the primary is sought, as I understand it, on a very
2 limited basis, only with respect to what would at the moment
3 be just \$8 million of indebtedness.

4 But as I understand this, it would seek to prime
5 others, vis a vis, that \$8 million. Mr. Leblanc should speak
6 to that and then the Court may have a view as to how best we
7 handle that efficiently because, obviously, I don't want to
8 walk out of one big knock-down, drag-out fight into another.

9 THE COURT: Yes. Mr. Leblanc?

10 MR. LEBLANC: Yes, Your Honor. Andrew Leblanc, of
11 Milbank, on behalf of HPS, and Mr. Dunne has also joined now,
12 Your Honor.

13 THE COURT: Yes.

14 MR. LEBLANC: With respect to priming, we -- for
15 the reasons I mentioned, Your Honor, we have a tremendous
16 amount of trepidation around the idea of lending money to
17 this company with an amount of secured debt away from us that
18 we literally do not know.

19 As Mr. Cooley said, he learned of some of the
20 liens. And Mr. Merola's client's liens may be well-known and
21 we certainly would be happy to talk with him about carving
22 his outlet, but the Guild liens, for example, I'm not sure
23 they know what amount of liens they have or are asserted and
24 we certainly don't, Your Honor, and we don't know what the
25 value of the collateral is.

1 And the idea of asking our client to lend into
2 this situation without knowing that it can at least get the
3 \$8 million repaid is one that we just can't advise them to do
4 that, Your Honor, even with the exigencies.

5 What I think -- what -- Your Honor, I'll make the
6 suggestion that I'm not negotiating with the Court. I know
7 Your Honor wouldn't expect that.

8 What I -- what -- we could certainly take back to
9 our clients the idea of a marginal proposal where as long as
10 there is \$8 million of value in HPS' own collateral, that we
11 would look to that first for repayment of the DIP --

12 THE COURT: Um-hum.

13 MR. LEBLANC: -- Before we look to take from
14 anyone else's collateral so that, as long as there is --
15 again, if the collateral that HPS has that is not subject to
16 someone else's liens were \$50 million, the no one would be
17 affected by the priming.

18 But in a circumstance where there are liens that
19 we're -- that, again, we don't know of today that have been
20 imposed on our assets such that the value of the HPS
21 collateral doesn't even equal \$8 million, we would look to be
22 paid by other peoples' collateral if we are paying the
23 employee expenses of this debtor at the First day.

24 THE COURT: Yes.

25 MR. LEBLANC: And I know Your Honor hasn't asked,

1 but I'd be prepared to take that to my client on the
2 understanding that that would satisfy the concerns of the
3 other parties.

4 And, again, if anyone -- if any other secured
5 lender is interested in funding alongside us or instead of
6 us, we're more than happy to take that, Your Honor. We'll --
7 they can join with us and fund on exactly the same terms that
8 we are funding.

9 That's -- the concern, Your Honor -- I think Your
10 Honor can probably understand the level of uncertainty and
11 lack of knowledge here is so extreme that I can't put my
12 client in the position of funding \$8 million on a DIP that
13 they may not actually get back.

14 THE COURT: Look, I agree with you entirely, Mr.
15 Leblanc. We are trying to balance on the one hand the
16 exigencies and on the other, frankly, due process. Parties
17 need to be notified particularly if they're seeking to claim
18 them.

19 MR. MEROLA: Your Honor, may I be heard?

20 THE COURT: Yes, Mr. Merola.

21 MR. MEROLA: I agree with Mr. Leblanc. This is an
22 unfortunate situation where we are negotiating across the
23 bench. I don't think my client -- I would have to check with
24 them. We have no objection. I don't think we have any
25 objection on an interim basis in granting HPS all of the

1 protections of 364 other than priming; administrative claim,
2 superpriority claim, lien on unencumbered assets.

3 In a situation where the real benefit and burden
4 of a going concern falls on the lenders that put \$500 million
5 into this after our lien was already was already in place to
6 now purport they don't understand our lien and now have to
7 prime us rings hollow. From my client's perspective is that
8 the library is our collateral. We want to stay senior in
9 that collateral because there are very complicated financing
10 arrangements related to that including the claims of the
11 Guild that in some cases actually prime our liens, but to go
12 in there now and lay in for an \$8 million advance that we are
13 going to do that without any showing as to why we're
14 (indiscernible) is problematic.

15 Again, I am willing -- I want to be
16 (indiscernible) as possible and we are willing to give them
17 all of the 364 protection on an interim basis and to the
18 extent they want to reserve the right to prime at the final
19 they're not going to be able to put on a priming show between
20 now and Friday.

21 So, Your Honor, I think what makes the most sense
22 --

23 MR. STEIGER: (Inaudible).

24 THE COURT: Mr. Steiger, thank you for going
25 unmute. I can hear you.

1 MR. MEROLA: -- is to the extent the Court can
2 move on to hear the employee motion today and approve it,
3 subject to the availability of cash for payment we have no
4 opposition to that. We have no opposition, after we see the
5 term sheet, to having a non-priming DIP entered, you know,
6 today or tomorrow. Unfortunately we have to see it before we
7 can read through it.

8 THE COURT: Look, I am happy to make time. Its 20
9 of 4 now, but I have time tomorrow if you want to come back.
10 It just sounds like there needs to be a few conversations and
11 probably best not had on the record. It seems that the major
12 players all have a desire to make this happen, particularly
13 to get the employees paid and the health benefits restored.

14 Let me just ask here your views on this. If we
15 were to go ahead and hear the employee wage motion and
16 perhaps get that approved, I mean that is all subject to the
17 DIP being entered anyway, but at least maybe you can walk
18 away with an order in hand that might give some comfort to
19 the workforce that, yes, this is a focus and the company is
20 doing what it can to try to get approval.

21 MR. COOLEY: Yes. I entirely agree, Your Honor.

22 THE COURT: Would you like then maybe to do that
23 and then adjourn for the day and have those conversations,
24 file whatever you need to file with respect to a DIP, and
25 then maybe put on time tomorrow to reconvene.

1 MR. COOLEY: I think that sounds right, Your
2 Honor.

3 THE COURT: Okay.

4 MR. PACHULSKI: Your Honor?

5 THE COURT: Yes, of course.

6 MR. PACHULSKI: Thank you, Your Honor. Again,
7 Richard Pachulski on behalf of the SRC.

8 With respect, again, with the wage motion, which I
9 think absolutely should be approved, and I haven't had an
10 opportunity to speak, but the three members are on the call.
11 I do think, at least, so that they get to review it, it
12 should be limited to the portions necessary so that payments
13 can be made tomorrow. There may be additional issues that
14 they may want that are really significant, but not
15 significant for the (indiscernible).

16 Obviously, the health benefits, obviously the
17 payment being made, but at least so that we have the
18 opportunity we can then take the rest of the motions up when
19 the DIP is being heard. Frankly, Your Honor, what I was
20 going to say, but I think Mr. Merola and more specifically
21 Your Honor dealt with it, is there has to be some time to
22 speak to the parties. I totally get where Mr. Leblanc is
23 coming from. I have spoken to the counsel for APP pretty
24 extensively over the last few days and including today. So, I
25 understand the balance of the priming which we dealt with

1 this morning. On the other hand, I also understand that HPS
2 is going to be out a significant amount of money however this case
3 comes out. That is just the reality based on fact they are
4 willing to take \$200 million.

5 I think it would be helpful, as Your Honor said,
6 to have that conversation but I do think it would be a great
7 idea to have a holding time, but we have to deal with both
8 the wiring versus the time to speak because what I am worried
9 about is, personally on behalf of the SRC, it would be fairly
10 hard to have this argument in front of Your Honor tomorrow
11 unless everybody has staked out their positions, everyone
12 knows what it is, it will be summarized, and Your Honor will
13 rule on the prime if that is where HPS goes. Parties
14 (indiscernible) are not willing to agree to it.

15 So, I am trying to find a balance so that the
16 employees get paid, but people aren't bound by off orders
17 that they really haven't had time to think about in light of
18 the fact that governance has changed and also accommodate
19 both HPS and the secured creditors and the employees. It's a
20 hard tread because we're coming up against July 4th, but I do
21 think having been before Your Honor a lot if there is anyone
22 who is going to make sure that happens it's Your Honor, but
23 it's not going to be an easy task because as you have seen
24 there are a lot of very opinionated, I can include myself,
25 parties in this case that are going to want to try to protect

1 their clients as they should.

2 THE COURT: As they should. Okay. Well, I guess
3 what I'm understanding currently, Mr. Pachulski, on the wage
4 motion is that there may be elements of relief that you feel
5 comfortable committing to for the SRC, but there may be other
6 elements of the relief sought that do require a conversation
7 with them and seeing if they will sign-off.

8 You have a client that you haven't spoken to yet,
9 so do you feel that you are in a position to have Mr. Cooley
10 go ahead with, at least, certain elements of the wage motion
11 seeking more limited relief at this point or does that need
12 to wait for tomorrow too?

13 MR. PACHULSKI: I am going to be presumptuous
14 enough to say that we should go forward with that. I think
15 it's the right thing, the employees need to know it.
16 Unfortunately, all three numbers are on here and if I have
17 been too presumptions, they will override me, but I think we
18 need to do it.

19 Again, I don't think there is anything, for the
20 most part, unusual about the wage motion. I just want to make
21 it clear I'm not here to, in any respect, try to set that
22 aside ultimately, but I want to do as little as possible to
23 try to get the employees comfortable and to at least have the
24 SRC make a determination with respect to the other issues
25 that are going to come up, whether its cash management or

1 other unrelated relief motions.

2 So, in that respect, yes, I am -- I probably
3 wouldn't have done that many years ago, but I am at a point
4 in my career that I want to take the chance here.

5 THE COURT: Okay. Very good.

6 MR. COOLEY: And I think, Your Honor -- oh, I'm --

7 THE COURT: No. Please go ahead, Mr. Cooley. I
8 was going to turn it to you.

9 MR. COOLEY: All right. I was just going to say
10 as a practical matter, as we get into it, the vast bulk --
11 well, I will just go ahead and get started and then I can say
12 what I was going to say within the rubric of the
13 presentation.

14 Your Honor, we are here on the debtors motion for
15 authority to pay certain employee related compensation
16 benefits arising in the ordinary course to pay certain fees
17 related to it and other associated relief found at Docket 3
18 in the lead case, Chicken Soup for the Soul Entertainment
19 Inc. The motion that is on file, Your Honor, I will note for
20 the record, has -- provides a fair amount of information and
21 in particular, on page 5 of that motion, contains a table
22 that summarizes the various baskets, if you will, of employee
23 compensation withholding and benefits programs amounts that
24 comprise the total figure for which relief is sought.

25 As the Court will see, and as I will walk through

1 briefly, and then also with Mr. Schwartz and a proffer of
2 evidence, the bulk of the dollar amounts contained in that
3 request for relief fall into really three baskets.

4 The first is approximately \$3.5 million
5 representing the take home pay portion of the employee wages
6 prepetition for the June 21st payroll, which was obviously
7 entirely prepetition, and the upcoming July 5th payroll,
8 which because the payroll is roughly one week in arrears, that
9 pay period as well happens to have been essentially fully
10 precipitation. This is one of those unusual cases where the
11 filing was right at the end of the pay period so we,
12 essentially, have two full prepetition pay periods although
13 one of them is not due till Friday. So, the basic take home
14 portion is approximately \$3.5 million or \$1.75 million per
15 pay period.

16 The second of the three large baskets is
17 approximately \$2.8 million, \$2.85 million, and that
18 represents payroll deductions and withholding obligations
19 associated with those two payrolls. We made this point in
20 the motion and I want to make it again here in open court
21 that by this motion the Court, obviously, has been made aware
22 that the company has something on the order of about \$15 and
23 a half million of outstanding back payroll taxes that have
24 not been paid. That is a matter that has been brought to the
25 Court's attention. We are aware of that issue. That is

1 something that the debtors will have to deal with in the
2 course of this case. We are not seeking authority to pay
3 that amount by this motion, but only that portion that
4 corresponds to the June 21st and the upcoming July 5th
5 payrolls. In other words, the amounts associated with the
6 two current payrolls, that is the only portion.

7 The third of the three large items is
8 approximately \$2.2 million, the bulk of which is a payment of
9 \$2 million which the company's informed is required to be
10 paid to Anthem, which was the company's existing healthcare
11 provider for its health insurance related benefits to
12 employees in which canceled service earlier in June. The
13 company is informed and believes that the payment of that
14 amount will earn them the reinstatement of that policy.

15 Obviously, we fully expect and I think this is
16 (indiscernible), but we fully expect that that payment will
17 be made only upon confirmation that the policy will be
18 reinstated. Obviously, not unlike a critical vendor
19 arrangement, such payments are made only when services are
20 going to be rendered and we understand that, but that is the
21 third of the three large components of the wages motion.

22 The other elements generally are smaller amounts,
23 contractor and staffing obligations of approximately \$90,000.
24 I will note for the record that the actual prepetition
25 accrued contractor and staffing obligations are about

1 \$330,000. \$90,000 represents the amount permissible within
2 the statutory cap. So, we are only seeking that portion
3 within the statutory cap.

4 There are reimbursable business expenses,
5 employees that have to pay for a meal, or gas, or so forth,
6 approximately \$5,500. Payroll processing fees to the
7 company's payroll processor, which is a company called UKG
8 and, essentially, processes the payroll not unlike ADP which,
9 of course, is familiar to the Court. Then finally, there are
10 funded, but unpaid health -- excuse me, 401-K plan
11 contributions of about \$594,000 making up the balance of the
12 request.

13 Those are the basic elements and as I said, the
14 health and welfare benefits are the typical panoply of
15 health, vision, dental, and so forth. There are certain non-
16 cash items that are described in the motion similar to what
17 the Court has seen in the past such as accrued paid time off.
18 I understand there is a fairly sizeable balance of accrued
19 paid time off; however, the debtor, as is typical, is,
20 obviously, not asking for permission to pay that amount but
21 simply to continue honoring what is, essentially, a
22 prepetition claim in the ordinary course of business.

23 Similarly, before, Worker's Comp claims the
24 company had a Worker's Comp policy that was cancelled in June
25 and now, essentially, purchases Worker's Comp on an ad hoc

1 basis as required. There are currently 33 open claims under
2 the existing Worker's Comp and the order provides for a
3 limited stay relief to permit claimants to proceed with those
4 claims under the applicable policies. Then there is a small
5 amount of severance relating to non-insider severance payable
6 under the company's ordinary course severance program which,
7 essentially, is based on a formula of two weeks of severance
8 per year of service, up to 12 weeks. The debtors request in
9 the order to continue honoring that in the ordinary course
10 and there is a small prepetition amount of approximately
11 \$24,000.

12 That is the basis contour of the motion. Again,
13 this was something that I think -- well, now I confess, I am
14 not going to speculate, I do not recall if this is one of the
15 ones that we were able to provide to Ms. Leamy before or
16 after the filing. I know we received some comments from her.
17 I want to make sure that we have them incorporated, but that
18 is the sum and substance of the debtors' request, Your Honor,
19 as set forth fully in the motion and the proposed form of
20 order.

21 As I said at the outset, Bart Schwartz, is present
22 here in the virtual courtroom and to the extent that the
23 Court would like a proffer of testimony, largely consistent
24 with what I just laid out, Mr. Schwartz is available and
25 prepared to do that.

1 THE COURT: I do require that evidence to make the
2 necessary findings. So, why don't you do the proffer and we
3 will make him available for cross-examination should anybody
4 wish.

5 MR. COOLEY: Mr. Schwartz, can you hear me all
6 right.

7 MR. SCHWARTZ: Yes, I can.

8 MR. COOLEY: Very good. Your Honor, do -- is your
9 preference to swear him in before the proffer or after?

10 THE COURT: Okay. Maybe we are talking about two
11 different things. I thought that you were going to make his
12 -- provide his testimony by way of proffer.

13 MR. COOLEY: Yes, Your Honor.

14 THE COURT: Why don't we swear Mr. Schwartz in.

15 Ms. Gadson.

16 (No verbal response)

17 THE COURT: Oh, I apologize. My courtroom deputy
18 did have to step away and I knew that. Let me ask if my ECRO
19 can swear the witness.

20 BART SCHWARTZ, DEBTOR WITNESS, SWORN

21 THE COURTROOM DEPUTY: Please state your full name
22 and spell your last name for the record.

23 THE WITNESS: Bart Michael Schwartz, S-C-H-W-A-R-
24 T-Z.

25 THE COURTROOM DEPUTY: Thank you.

1 THE COURT: I will confess that I have yet to
2 swear a witness. So, I wouldn't know what to ask Mr.
3 Schwartz to do.

4 Please go ahead, Mr. Cooley.

5 MR. COOLEY: Thank you, Your Honor. This will
6 constitute the proffer of testimony of Mr. Bart Schwartz. If
7 called to the stand to testify Mr. Schwartz would testify as
8 follows:

9 My name is Bart Schwartz and I am the current
10 chief executive officer of Chicken Soup for the Soul
11 Entertainment Inc., and each of its debtor affiliates. I am
12 familiar with the related requests in the wages and benefits
13 motion.

14 Chicken Soup and its debtor affiliates currently
15 have approximately 1,000 full and part-time employees. Its
16 employees are generally paid on a biweekly basis and are
17 eligible for and receive a variety of standard health and
18 other benefits as more fully described in the motion,
19 including health insurance, 401-K plans, paid time off and so
20 forth.

21 In this company, in this case, the debtors did not
22 make their June 21st payroll to employees at the normally
23 scheduled time. In addition, a second payroll covering the
24 last two weeks is scheduled for this Friday, July 5th. As
25 set forth in the motion, these payroll amounts include

1 approximately \$3.5 million total net wages plus \$2.8 million
2 in payroll deduction and other withholding obligations
3 associated with those two payrolls.

4 I am aware that prior to my involvement with the
5 company the debtors failed to remit approximately \$15 million
6 in payroll taxes. The amounts requested in this motion do not
7 include any of those amounts except for the payroll taxes and
8 withholding associated with the aforementioned to current
9 payrolls. The company also has approximately \$330,000 in
10 prepetition contractor and staffing obligations and requests
11 authority to pay approximately \$90,900 in accordance with the
12 applicable statutory caps.

13 There are also reimbursable business expenses that
14 employees incur in the course of their duties presently
15 totaling approximately \$5,500. And payroll processing fees
16 of approximately \$130,000 due to UKG, which is the company's
17 payroll processing firm. For employee benefits programs the
18 debtors seek to maintain and honor their existing programs,
19 including paid time off, health and welfare, 401-K and non-
20 insider severance, and most particularly request authority to
21 reinstate their health insurance previously provided through
22 Anthem at which the debtor understands may be reinstated for
23 the benefit of employees with a payment of \$2 million at this
24 time. The requested relief also includes certain non-cash
25 items such as accrued paid time off which the debtors seek

1 only to honor in the ordinary course of business.

2 Finally, the debtors owe approximately \$146,000 in
3 claims under dental plans and \$40,000 under a vision plan,
4 again, as set forth more fully in the motion. And they
5 request also to permit employees to prosecute the
6 approximately 33 Worker's Comp claims currently outstanding
7 through the applicable programs. Finally, the debtors owe
8 approximately \$592,000 in accrued, but unpaid employee 401-K
9 contributions for which the debtors also seek authority to
10 pay.

11 The debtor believes that the relief requested is
12 not only necessary but critical to maintain the good order of
13 the company and its ability to continue to function through
14 this Chapter 11 case in order to realize the maximum possible
15 value for the benefit of its stakeholders including
16 creditors, employees, and others.

17 This concludes the proffer of testimony.

18 THE COURT: Thank you.

19 Is there anybody that would like to cross-examine
20 Mr. Schwartz?

21 MS. LEAMY: Yes, Your Honor.

22 THE COURT: Ms. Leamy.

23 CROSS-EXAMINATION

24 BY MS. LEAMY:

25 Q Good afternoon, Mr. Schwartz. My name is Jane Leamy. I

1 am an attorney with the Office of the United States Trustee.

2 I just have one question about the payroll, the deeds,
3 and generally they (indiscernible), but given the withholding
4 obligation issues I do have a question.

5 So, as I understand it, the payroll for July 5th is for
6 the last two weeks in June, is that correct?

7 A Actually, I would defer to Mr. Cooley on that. I
8 believe that is correct.

9 Q And then the payroll that was due on June 21st is for
10 the first two weeks of June, is that correct?

11 A I believe that is correct, yes.

12 Q So, in the motion, Paragraph 26 of the first day wages
13 motion says that as of the petition date the debtors estimate
14 they owe approximately \$15.5 million in accrued but unpaid
15 withholding obligations from October 1st, 2023 through June
16 7th, 2024. So, my question is -- and then the next sentence
17 says the debtors are not seeking authority in this motion to
18 pay the accrued withholding obligations except for that
19 portion while presenting approximately \$1.3 million in
20 withholding obligations that are accrued but unpaid from June
21 8th, 2024.

22 So, my question is what is the significance of that
23 June 8th date? It doesn't seem to match up with the pay
24 period day or the payroll date. So that is my question.

25 A Frankly, I would have to look at the records myself to

1 answer that question.

2 Q What records would you have to look at to answer that
3 question?

4 A I would have to look at the payroll records and I would
5 ask the question you're asking.

6 Q Okay. Do you have certainty that the \$1.374 million
7 number is the correct number to be paid for the June -- the
8 two paychecks that would be paid to the employees. Is that a
9 correct withholding number?

10 A Yes. I believe that is correct.

11 MS. LEAMY: I have no further questions, Your
12 Honor.

13 THE COURT: Okay. Thank you, Ms. Leamy.

14 Does anyone else wish to cross-examine Mr.
15 Schwartz?

16 (No verbal response)

17 THE COURT: Mr. Cooley, any redirect?

18 MR. COOLEY: No, Your Honor. Thank you.

19 THE COURT: Okay. Thank you, Mr. Schwartz. You
20 are excused.

21 THE WITNESS: Thank you, Your Honor.

22 (Witness excused)

23 THE COURT: Okay. Is there any other evidence that
24 you would like to admit in support of the wages motion?

25 MR. COOLEY: No, Your Honor. Thank you.

1 THE COURT: Would you like to make any further
2 comments in support of the motion, Mr. Cooley?

3 MR. COOLEY: In the interest of brevity and
4 preserving everyone's time, Your Honor, I think I'm fine to
5 stand on the arguments and authorities that are presented in
6 the motion without restating anything further here.

7 THE COURT: Very good. Is there anybody else that
8 would like to be heard regarding the wage motion?

9 MR. PACHULSKI: Your Honor, I simply have a
10 question for Mr. Cooley because I had reviewed the motion
11 before and I know that HPS, I suspect, has discussed this
12 with Mr. Cooley, but I don't have an answer and maybe I am
13 just missing something in the pleading. If you look at page
14 5 of the wage motion it requests \$9.4 million, but the DIP
15 portion is \$8 million and there must be a number that just
16 isn't being paid or I'm missing something, but I'm trying to
17 reconcile the \$9.4 million with the \$8 million so we don't
18 have a problem tomorrow. So, maybe (indiscernible) doesn't
19 understand that, but I can't reconcile the \$9.4 and the \$8.

20 MR. COOLEY: Your Honor, my understanding is that
21 the difference would be, essentially, a function of the
22 projected revenue contained in the DIP budget. The proposed
23 interim financing amount is, obviously, in addition to the
24 revenue generated by the company in the ordinary course of
25 business. So, if you go off of the projections in the DIP

1 budget that is, essentially, the delta. I had the same
2 question. Mr. Pachulski and I had to walk through all of
3 this yesterday to make sure I understood it.

4 MR. PACHULSKI: I could have asked Mr. Cooley
5 beforehand, but hopefully the money is there, Your Honor. I
6 just didn't know where the \$1.4 was coming from. It wasn't
7 clear from the wage motion. So, I didn't connect the dots.
8 Sorry for distracting, but I didn't get how it was going to
9 happen. Hopefully the \$1.4 million is there. With that I
10 have no idea.

11 THE COURT: Okay. Thank you, Mr. Pachulski.

12 Mr. Merola.

13 MR. MEROLA: Your Honor, as indicated, we have no
14 objection to the entry of the wage order, but we want to be
15 clear that as in further order of the Court we are not
16 consenting to the use of our cash collateral for the payment
17 of any post-petition expenses.

18 THE COURT: Understood.

19 MR. MEROLA: Thank you.

20 THE COURT: Mr. Ahdoot.

21 MR. AHDOOT: Your Honor, we find ourselves in the
22 same position as Mr. Merola and have to come to the same
23 reservation. Thank you.

24 THE COURT: Thank you, Mr. Ahdoot.

25 Is there anybody else that would like to be heard

1 regarding he wages motion?

2 MR. LEBLANC: Your Honor, its Andrew Leblanc of
3 Milbank on behalf of HPS.

4 I just wanted to make sure that -- there's two
5 issues. Our understanding, from the presentation, is that
6 the 401-K plan contributions that those are employee
7 contributions that have been withheld and are not company
8 matching contributions. We just want confirmation of that
9 and with respect to the severance it doesn't look like there
10 is any -- there is no -- we have not been asked, in
11 connection with the DIP proposal to satisfy any employee
12 severance payment.

13 So, I would ask that for these purposes that just
14 be struck from this order, let Mr. Pachulski and the SRC take
15 a look at it and include that. We just don't know what those
16 issues are. I know in Paragraph 7 it says -- it looks like
17 its only \$24,000 but we just don't know what those are at
18 this point and we have not been asked to approve those.

19 THE COURT: Yeah, in Paragraph 7 of the interim
20 order, as I read it, does exclude for the purposes of the
21 interim order the payment of any severance obligations.

22 Mr. Cooley, is that your intention with Paragraph
23 7?

24 MR. COOLEY: I believe that is correct, Your
25 Honor. I am going to flip to it myself just to -- I believe

1 that is correct, Your Honor. As reading it and seeing the
2 reference to 503(c), that provision is probably clarifying
3 that its not picking up any type of, frankly, insider
4 severance, or bonus, or that sort of thing, anything under
5 employment contracts which it's not.

6 However, hearing Mr. Leblanc's concern, which
7 again I appreciate and I appreciate that they're trying to get
8 up to speed on some data points that they don't presently
9 have, if that is something that we need to kick to a final
10 hearing or take up at a later date it is a relatively small
11 amount. We will do what the Court instructs.

12 THE COURT: On the 401-K portion of the budget the
13 594, can you confirm that that is employee withholding.

14 MR. COOLEY: That is consistent with my
15 understanding of it, Your Honor, as what is presented in the
16 motion, but those are the employee portions withhold rather
17 than matching contributions.

18 THE COURT: Mr. Leblanc, do those answers
19 adequately address your concerns?

20 MR. LEBLANC: Your Honor, that does. Thank you
21 very much.

22 THE COURT: Okay. Thank you, Mr. Leblanc.

23 Is there anybody else who would like to be heard
24 regarding employee wage motion?

25 (No verbal response)

1 THE COURT: Okay. I hear no response. Based upon
2 the record before me in the form of Mr. Schwartz's testimony
3 I do find that there is more then adequate cause to grant the
4 employee wage motion and I do so on an interim basis because
5 its self-evident that immediate and irreparable harm would
6 come to the debtors from their continued inability or failure
7 to meet their payroll obligations. So, therefore, I am happy
8 to grant this relief on an interim basis and will enter the
9 order.

10 One thing you are going to need to fill in is a
11 final hearing date. So, if you want to talk about scheduling
12 now we can do that or if you have any other business you
13 would like to handle before we talk about scheduling, I will
14 leave it up to you.

15 MR. COOLEY: Your Honor, since we are not going to
16 do an oral DIP motion today, I think that that probably takes
17 us to the end of today's agenda and as the parties described,
18 cash management, the other procedural motions and such really
19 don't have to happen today. Those are more administrative in
20 nature. This was the important one. So, I think that will
21 conclude our agenda. So, yes, if the Court is prepared to
22 talk about scheduling we can do that.

23 THE COURT: Okay. I would be looking at the week
24 of the 29th. Would that work for the debtors and the other
25 parties?

1 MR. PACHULSKI: Your Honor, if I could -- since
2 the members of the SRC may want to be there, if we could
3 schedule tomorrow so I could speak to them that would be
4 helpful.

5 THE COURT: That is fine. If you would like, we
6 can -- Mr. Cooley, we can enter the wages order without the
7 hearing date and we can make that subject to a further notice
8 that you can send out.

9 MR. COOLEY: That's fine, Your Honor.

10 THE COURT: Okay. So, I would just ask your
11 colleagues in Delaware to upload the interim wage order so
12 that my staff can go ahead and address it with me.

13 MR. COOLEY: We will do that.

14 THE COURT: Okay.

15 MS. COHEN: Your Honor, if I could be heard.

16 THE COURT: Yes, Ms. Cohen.

17 MS. COHEN: Apologies for interrupting. Good
18 afternoon, Your Honor. Kim Cohen of Shipman & Goodwin on
19 behalf of U.S. Bank in its capacity as indenture trustee and
20 the largest unsecured creditor in this case.

21 So far, the focus has been on the secured
22 creditors, as you heard extensively. I just wanted to note,
23 and I think it will be taken up another day, today before we
24 adjourn that in the context of the (indiscernible) DIP that
25 has yet to be papered the typical rights reserved for any

1 unsecured creditors committee, which would typically be
2 reserved should be addressed as well. I'm sure that is
3 something the U.S. Trustees counsel will be looking at as
4 well, but we just wanted to note that today.

5 THE COURT: Thank you, Ms. Cohen.

6 Mr. Cooley, do you want to talk about getting a
7 hearing scheduled for tomorrow or Friday for the DIP.

8 MR. COOLEY: Yes, please.

9 THE COURT: Tell me what is your ask?

10 MR. COOLEY: Tomorrow for sure if we possibly can,
11 Your Honor, and simply because, obviously, with each passing
12 day, you know, this business, we're into the first of the
13 month. People have had rent checks come due and so I feel a
14 special urgency this time of the month. So, if we could do it
15 tomorrow, recognizing the burden that puts on parties here
16 from a notice and response perspective for something that has
17 not yet been filed, but if we can do that I think that is the
18 very best thing for the employees if we can pull it off and
19 I'm prepared to do the work necessary to make that possible.

20 THE COURT: I can offer you 11 a.m. Do you think
21 that would be -- I realize its rough for everybody and so I
22 understand that, particularly the ones on the West Coast.
23 There are quite a few on here that may only see a filing in
24 the morning, but if 11 a.m. works I can schedule it then.

25 MR. COOLEY: Certainly, from the debtors'

1 perspective that works. The other advantage, I think, we
2 have is, and the proof will be in the pudding, that my
3 present sense of the proceedings thus far is that it is
4 likely to be a fairly straightforward review, negation and
5 dispute other than the priming issue that has really been
6 raised, which, frankly, we know who the people are who have
7 spoken up who are raising the issue. They are here with us
8 today. As I have said, I have been in touch with at least
9 some of them already and Milbank may have as well.

10 So, I suspect that we will be able to start or
11 continue working through that process as we are preparing the
12 filing as opposed to the normal course of -- the normal
13 sequence of events where we file it and then we begin to
14 talk. Here, we should be able to dual track all of that
15 which I think will help give us the most value for the
16 limited time available.

17 THE COURT: I agree. So, lets set it for 11
18 o'clock. I will ask for you and your colleagues to prepare an
19 agenda and I think we will have to get you a new hearing
20 link. So, if you coordinate with my Chambers, we will get
21 that over to you.

22 Before I wrap up, is there anybody else who wishes
23 to offer any comment? I have seen a couple of faces pop-up on
24 the screen.

25 (No verbal response)

1 THE COURT: Okay. I don't hear any response. I do
2 want to express my appreciation to all the parties. This has
3 been unusual. The parties have been very patient in working
4 with it and I will also particularly want to express my
5 appreciation to Ms. Leamy. I can tell that she must have
6 spent quite a bit of time on this over the weekend and I
7 think the work of the U.S. Trustee, particularly on weekends
8 on these sorts of matters, is often unnoted and
9 unappreciated, but I do note it, and I do appreciate it, and
10 I think we all should be aware of the great work that they do
11 to make sure that these hearings come off the way they do.

12 So, with that --

13 MR. AHDOOT: Your Honor.

14 THE COURT: Yes.

15 MR. AHDOOT: I'm so sorry to interrupt. I have a
16 very small process request (indiscernible) Guilds.

17 THE COURT: Yes.

18 MR. AHDOOT: I happen to be on the West Coast and
19 so I have just been sort of racking my brain on the timeline.
20 If there is any way that Mr. Cooley could forward us drafts
21 of the deals or anything that we could consider in advance we
22 would very much appreciate that. I just thought it was
23 appropriate to ask. Again, I am sorry for interrupting.

24 THE COURT: Not a worry, Mr. Ahdoot. Thank you
25 for your comment.

1 Mr. Cooley, before I move onto somebody else who
2 has raised their hand, would you like to respond.

3 MR. COOLEY: Yes, Your Honor. Certainly,
4 obviously, I will just want to coordinate with Milbank on
5 that to make sure that its either ready to go or ready to go
6 subject to any caveats because we have been moving quickly.
7 So, there may be proofreading, etc., but I suspect people
8 will be more interested in the order and term sheet then in
9 the motion. So, if we can -- I see nodding heads. If we
10 could do that then I certainly have no objection and would be
11 more then happy to do that if that helps expedite the
12 process. Again, we are going to be continuing these dialogs
13 in tandem with preparing and filing the motion. So, whatever
14 we can do in advance that serves all of us.

15 THE COURT: Mr. Laurin, you asked to be heard.

16 MR. LAURIN: Yes. Thank you, Your Honor.

17 Again, this is in the category of a housekeeping
18 matter, I think. I think it somewhat implies as well, but to
19 my point of wanting to be able to present the breakup fee
20 position and make our request consistent with the motion that
21 is pending, and there will be, obviously, another motion
22 being filed, is it the Court's preference that that be set
23 for a hearing at the time of the final DIP hearing. Would
24 that be an appropriate way to --

25 THE COURT: I suspect that by the time we set that

1 that will provide adequate time to put it out on notice
2 without having to seek any sort of short notice or expedited
3 treatment.

4 MR. LAURIN: Okay. That's fine. Thank you.

5 MR. LEBLANC: Your Honor, Andrew Leblanc of
6 Milbank.

7 I didn't say it earlier, but I think it probably
8 goes without saying that we, obviously, will object to Mr.
9 Laurin's clients request for payment post-petition and the
10 prepetition agreement that was approved by, what we think was
11 a flawed governance process, but we will deal with that at
12 the appropriate time.

13 Your Honor, I think for Mr. Cooley's benefit I
14 think we are fine with the order and the term sheet going
15 around to the parties so that they can review that. I wonder,
16 our friends at Richards, Layton do we really need to have a
17 motion or can we just get the order and term sheet around so
18 people can focus on trying to do that. I am fine either way,
19 but if that would -- I think, Your Honor, might save the
20 parties a lot of time.

21 Obviously, if its sent out by the debtors counsel
22 to all the parties now it can begin -- those that have
23 requested it may raise their hand. We are fine with that.
24 That is, obviously, subject to our -- we will continue to
25 review and make sure we didn't miss any changes. We would

1 like to see if there is a possibility of getting this done
2 because, obviously, the priming issue is an issue for us. I
3 don't anticipate our clients will fund on the basis of it
4 being junior to any other secured debt.

5 We want to have the dialog with parties. Again,
6 if people want to fund to preserve their own collateral value
7 we are happy to have that happen. My suggestion is we do
8 that rather than a motion, Your Honor.

9 THE COURT: Yeah, I'm fine with -- I have had a
10 chance to think about it in the last few minutes. So, I am
11 fine with you filing it under a notice of revised proposed
12 order, but it does need to get filed so that parties have the
13 opportunity to review it.

14 MR. COOLEY: That's what we will do, Your Honor.
15 As he was describing that, that is what was going through my
16 head. We can just do precisely what the Court suggests.
17 That should be something as soon as the -- that will allow us
18 all to focus our attention on any necessary proofing for the
19 term sheet and order which is more important for everybody,
20 and probably get it on file much sooner.

21 THE COURT: Yes.

22 MR. MEROLA: Your Honor.

23 THE COURT: Yes, Mr. Merola.

24 MR. MEROLA: Apologies, Your Honor. I understand
25 that sometimes due process (indiscernible). If we are going

1 to ask to be primed there is no evidence in the record of
2 valuation other then what Mr. Leblanc referred to is some
3 dated appraisal that isn't even in the record. If we are
4 going to have a hearing that people are seriously considering
5 priming tomorrow, I think we are entitled to know what the
6 case is and what the argument is by the debtor and the
7 secured lender.

8 While we are happy to look at the term sheet and
9 the order and be as responsive as we can, the factual issue
10 of adequate protection and value to support that adequate
11 protection we need to know what people are going to argue
12 tomorrow.

13 THE COURT: Yeah, and I think you need to have
14 those conversations with Mr. Cooley and Mr. Leblanc and their
15 colleagues. Is it an evidentiary issue for tomorrow that --
16 nothing I said today should be heard to imply that the
17 debtors (indiscernible) evidentiary burden of proving up why
18 I should approve any DIP that they propose. So that is
19 certainly evidence that is very much on the table for
20 tomorrow. I think it would be worth having those
21 conversations with the parties tonight to understand where
22 everybody is and what the proposed resolution is.

23 Okay. Then we will be back together at 11 a.m.
24 Eastern tomorrow. Till then I wish all a good night. It will
25 be a busy night for you, but I will look forward to seeing

1 what everybody comes up with. With that -- (Audio stops)

2 (Proceedings concluded at 4:21 p.m.)

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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

6

7 /s/ William J. Garling July 3, 2024

8 | William J. Garling, CET-543

Certified Court Transcriptionist

10 | For Reliable

11

12 | /s/ Tracey J. Williams

July 3, 2024

13 Tracey J. Williams, CET-914

14 | Certified Court Transcriptionist

15 | For Reliable

16

17 | /s/ Tammy L. Kelly

July 3, 2024

18 | Tammy L. Kelly

19 | Court Transcriptionist For Reliable

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